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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1969/1970

No. 1373/18

OCALA STAR-BANNER COMPANY, ET AL.,
PETITIONERS,

vs.

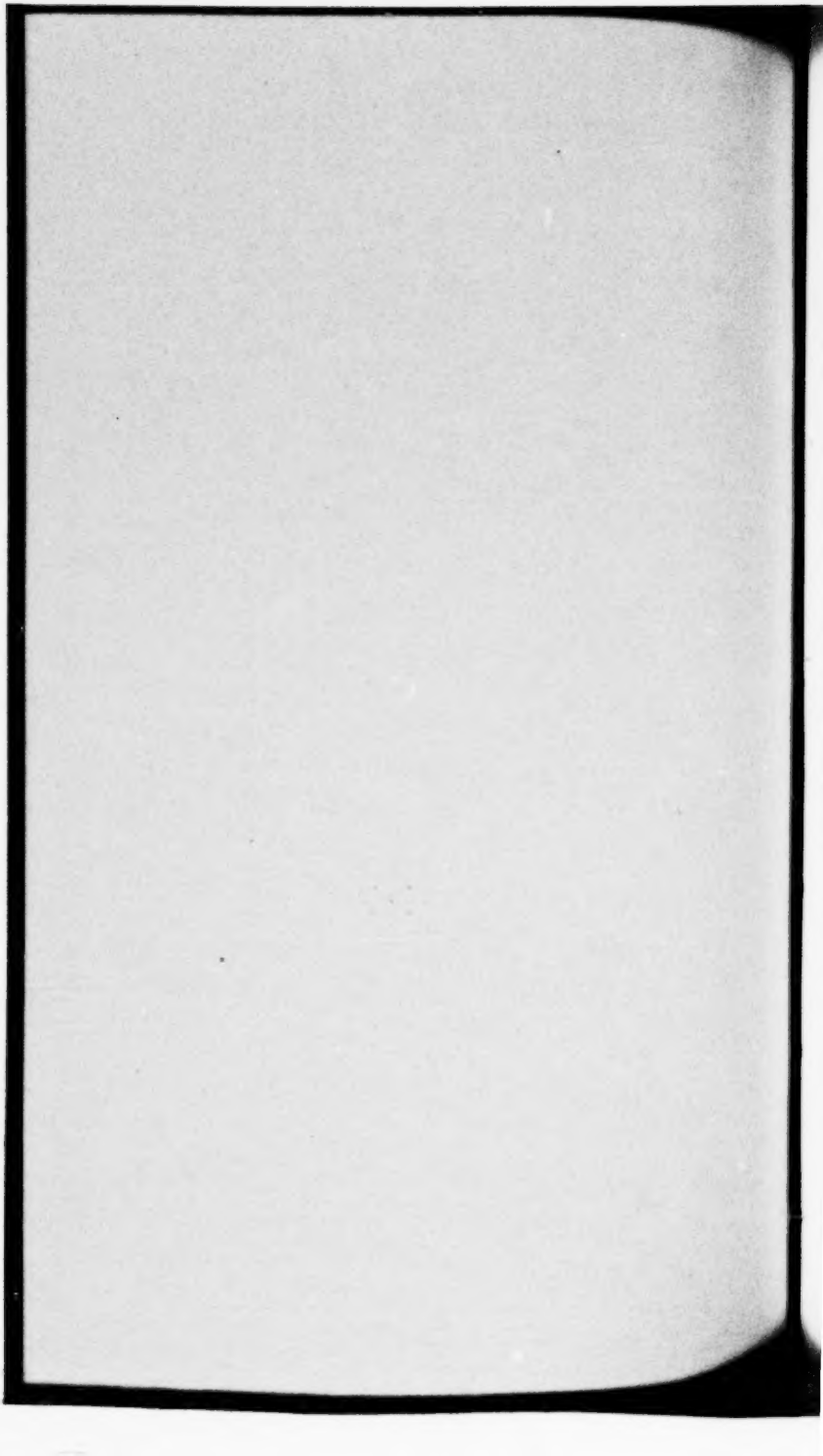
LEONARD DAMRON,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

PETITION FOR CERTIORARI FILED MARCH 30, 1970
CERTIORARI GRANTED MAY 4, 1970

WALLACE DUNN
1 E. Silver Springs Blvd.,
Ocala, Florida 32670
Attorney for Respondent.

HAROLD B. WAHL
Loftin and Wahl
414 Florida Title Bldg.,
Jacksonville, Florida 32202
Attorneys for Petitioners.



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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MARION COUNTY.
AT LAW NO. 14659

LEONARD DAMRON,
Plaintiff,

vs.

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,
Defendants.

COMPLAINT

The Plaintiff, Leonard Damron, by his undersigned attorney, brings this complaint against the Defendants, Ocala Star-Banner Company, a Florida corporation, and Loyal Phillips, individually, and alleges;

1. The Plaintiff is a resident of Crystal River, Citrus County, Florida.

2. The Defendant, Ocala Star-Banner Company, a Florida corporation, has its principal place of business in Marion County, Florida, and is the owner and distributor of the Ocala Star-Banner, a newspaper which is generally distributed in Marion, Citrus, Levy and Sumter Counties, and elsewhere. The Defendant, Loyal Phillips, is a resident of Marion County, Florida, and is a Vice President of the Ocala Star-Banner Company, and Publisher of the Ocala Star-Banner.

3. That the Defendants caused to be published in the April 18, 1966 issue of the Ocala Star-Banner a defamatory article which appeared on page 9 thereof entitled: DAMRON'S CASE PASSED OVER TO NEXT U. S. COURT TERM, and said article began with the statement:

"A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville. * * *"

A copy of said article in total is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

4. That on April 19, 1966, the Plaintiff did cause to be served, by mail at least five days before the institution of this action, upon the Defendant, Loyal Phillips, Publisher, who is a Vice President of the Ocala Star-Banner Company, and upon the Defendant, Ocala Star-Banner Company, a notice in writing specifying the aforesaid article and the statements therein which Plaintiff alleged to be false and defamatory, a copy of said notice is attached hereto and made a part hereof as Plaintiff's Exhibit "B".

5. That the aforesaid notice was delivered to the Defendant, Loyal Phillips, Publisher and Vice President of the Ocala Star-Banner Company, and the Defendant, Ocala Star-Banner Company, on April 20, 1966, a copy of the return receipt which is proof of service is attached hereto and made a part hereof as Plaintiff's Exhibit "C".

6. That the Plaintiff is and was on April 18, 1966, a public officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida, and was and is a businessman in said Town and County, owning and operating a garage. The Plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area.

7. That the words as set forth above in the article published on April 18, 1966, from their common useage imputed the charge of perjury to the Plaintiff, all from which the electorate of Crystal River and Citrus County, Florida, and others

would believe that the Plaintiff had committed the crime of perjury, which is a felony punishable by imprisonment, and has left the impression that the Plaintiff was dishonest and had perjured himself in a United States Federal Court trial.

8. That the Plaintiff has never been charged with the crime of perjury and the statements contained in the article published by the Defendants on April 18, 1966, were false and libelous per se.

9. That the aforesaid article published on April 18, 1966 by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an area where voters resided who would cast their votes in a democratic primary on May 3, 1966, in which primary the Plaintiff was a candidate for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That throughout the remainder of the political campaign, from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article.

10. That the Plaintiff continues to hold the office of Mayor of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A", and Plaintiff desires to continue to hold this office for which he will be required to campaign and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continues to create doubt and suspicion in the minds of the people of Citrus County, Florida, as to the integrity of the Plaintiff.

11. That because of the actions of the Defendants in the

publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the Plaintiff has suffered irreparable damages to his reputation, as an individual, public officer, candidate for public office and as a businessman.

WHEREFORE, Plaintiff demands judgment for compensatory damages against the Defendants in the amount of Fifty Thousand ($50,000.00) Dollars, and his costs.

WHEREFORE, Plaintiff demands judgment against the Defendants for punitive damages in the amount of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, Plaintiff demands trial by jury.

EXHIBIT A TO COMPLAINT

Monday, April 18, 1966 Ocala Star-Banner 9

DAMRON CASE PASSED OVER
TO NEXT U.S. COURT TERM

INGLIS – A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville.

Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Ruth Sill, who was allegedly in the Izaac Walton Lodge.

According to officials, the Finleys interfered with the officers, were arrested and charged with interfering with arrest.

A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

The civil suit which followed was filed under an old, little-used federal statute in which the Finleys charged former sheriff J. W. Turner and Cason with a violation of their civil rights.

Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958 several years prior to the incident, but numerous other witnesses, summoned by the plaintiff, gave testimony, saying that Mrs. Finley had not previously worn a brace.

Damron was released on $2,000 bond, following his arrest by federal marshals Jan. 27.

EXHIBIT B TO COMPLAINT

Crystal River, Florida
April 19, 1966

Mr. Loyal Phillips, Publisher
Ocala Star-Banner
P. O. Box 490
Ocala, Florida 32670

Dear Mr. Phillips:

There appears on page 9 of your publication dated Monday, April 18, 1966 delivered in Citrus County, an article entitled, "Damron Case Passed Over to Next U. S. Court Term".

This article names the defendant a local garage owner, *Leonard* Damron.

You are advised the undersigned Leonard Damron, has never been charged with the crime of perjury, is presently the Mayor of the Town of Crystal River and is a candidate for Tax Assessor of Citrus County, Florida.

The statements contained in the aforesaid article are false and defamatory because they allege a charge against the undersigned which is untrue.

Very truly yours,
Leonard Damron

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION TO DISMISS

The defendants, OCALA STAR-BANNER COMPANY, a Florida corporation, and LOYAL PHILLIPS, individually, severally move the Court to dismiss the Complaint filed against them upon the following grounds as to each of said defendants severally:

1. Said Complaint fails to state a cause of action upon which relief can be granted as against either of these defendants.

2. While said Complaint alleges a notice in writing of the alleged defamatory matter, said Complaint does not allege that the defendants failed to correct or retract said alleged defamatory matter.

3. Said Complaint fails to allege wantonness, recklessness, or carelessness on the part of the defendants or either of them.

4. Said Complaint fails to allege that the defendants and each of them severally published the alleged defamatory matter maliciously.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION TO STRIKE

The defendants, severally, by their undersigned attorneys, move the Court to strike the following portions of the Complaint herein on the ground that said portions of said Complaint are redundant, immaterial, scandalous, impertinent, and

prejudicial to the defendants and each of them severally, to-wit:

1. The first two clauses of the first sentence of paragraph six of the Complaint.

2. Paragraph nine of the Complaint and each clause and sentence thereof severally.

3. Paragraph ten of the Complaint and each clause and sentence thereof severally.

4. That portion of paragraph eleven of the Complaint alleging damage to plaintiff's reputation either as a public officer or as a candidate for public office.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ORDER DENYING MOTION TO COMPLAINT

The Defendants' Motion to Dismiss and Motion to Strike portions of Plaintiff's Complaint coming on this day to be heard, after due notice of hearing, and upon due consideration of the arguments of counsel for the respective parties, it is

ORDERED and ADJUDGED that the Defendants' Motion to Dismiss and Motion to Strike be, and the same are hereby, denied and the Defendants shall have twenty (20) days from the date of this order in which to file their answer.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ANSWER

(Showing Portions Stricken by Trial Court)

The defendants, OCALA STAR-BANNER COMPANY, a Florida corporation, and LOYAL PHILLIPS, individually, severally answering the complaint herein, say:

1. That they severally admit the allegations of paragraphs 1, 2, 3, 4, 5, and 6 of the complaint [but further show that said alleged defamatory article actually referred to a brother of the plaintiff named JAMES DAMRON who was the owner and operator of a garage in Inglis, Levy County, Florida, a neighboring community located a few miles north of Crystal River, Florida; and that both the plaintiff and his said brother, JAMES DAMRON, were and are well known in the Marion, Citrus, Levy, and Sumter county area, and that the federal court charge against said brother of the plaintiff had been the subject of previous newspaper publicity in said area, and that it was by pure inadvertence that the first name of the plaintiff was used in said alleged defamatory article in place of the first name of the plaintiff's brother, the said JAMES DAMRON.] (Material in brackets stricken by court).

2. Defendants severally deny the allegations of paragraph 7 of the complaint, [and show that as hereinbefore alleged the relationship of the plaintiff and his said brother was well known in the area involved as was the pendency of said charge against said brother of plaintiff.] (Material in brackets stricken by Court).

3. Answering paragraph 8 of the complaint, defendants severally say that they are without knowledge as to whether the plaintiff has ever been charged with a crime of perjury or any other crime, [but show that the plaintiff's brother,

JAMES DAMRON, was so charged,] and the defendants severally deny that the statements contained in the article complained of were false in any respect [other than the inadvertent substitution of the first name of plaintiff for the first name of plaintiff's brother and that defendants show that under all of the facts and circumstances said article was not libelous.] (Material in brackets stricken by Court).

4. Answering paragraph 9 of the complaint, the defendants severally admit that at the time of the publication of said article the plaintiff was a candidate for office as alleged in said complaint but severally deny that the publication of said article had any effect upon said election or damaged the reputation of the plaintiff.

5. Answering paragraph 10 of the complaint, the defendants severally admit that plaintiff continues to hold the office of mayor of Crystal River and show that since the filing of this suit the plaintiff has been re-elected to said office, thus demonstrating that the article complained of had no effect upon plaintiff's political career and in fact created no doubt or suspicion in the minds of the people of Citrus County, Florida, as to the integrity of plaintiff.

6. The defendants severally deny the allegations of paragraph 11 of the complaint.

7. Further answering the complaint herein, the defendants severally show that defendants' own employees discovered the erroneous use of the first name of plaintiff in the story concerning plaintiff's brother, JAMES DAMRON, on the day following the publication of said article, and immediately published a retraction and apology in the issue of the Ocala Star-Banner on Tuesday, April 19, 1966, the day following the publication of the article complained of, and before receiving plaintiff's request for retraction, and that on several occasions thereafter, both in a later issue of the Ocala Star-Banner and by personal contact by the employees of the Star-Banner with the plaintiff, made repeated apologies to

plaintiff for the inadvertent use of the first name of the plaintiff in place of the first name of the plaintiiff's brother in the said story complained of dated April 18, 1966, and defendants show that said inadvertent confusion in the first names of plaintiff and plaintiff's brother in said story did not result from any malice or ill feeling by defendants or any of the employees of the defendants or either of them towards the plaintiff.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

FINAL JUDGMENT FOR PLAINTIFF

This cause coming on to be heard before the Honorable D. R. Smith, one of the Judges of the above styled Court, and Thomas B. Ingram, foreman of the jury, and five other good and lawful men of the County of Marion and State of Florida, who being duly sworn according to law and after having heard testimony and evidence adduced before them, and having heard the charges of the Court, and being fully advised in the premises and having retired to consider their verdict, returned to open Court and rendered the following verdict:

> "We, the jury, find for the Plaintiff, Leonard Damron, against the Defendant, Ocala Star-Banner Company and Loyal Phillips, and assess the Plaintiff's actual damage at $22,000.00. So say we all.
> This 24th day of January, 1968.
>
> /s/ Thomas B. Ingram
> Foreman

It is therefore, ORDERED and ADJUDGED that the Plaintiff Leonard Damron, does have and recover from the Defendant, Ocala Star-Banner Company, a Florida corporation,

and Loyal Phillips, individually, the sum of Twenty-two Thousand Dollars ($22,000.00), plus Plaintiff's costs in the sum of One Hundred Seventy-six and 48/100 Dollars ($176.48), for all of which let execution issue.

DONE and ORDERED at Ocala, Florida, this 2 day of February, 1968.

/s/ D. R. SMITH
Circuit Judge

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION FOR NEW TRIAL

Now come the defendants and move the Court for a new trial (and in the alternative for judgment in favor of the defendants notwithstanding the verdict) on each of the following grounds, separately and severally:

1. The verdict is so grossly excessive as to shock the judicial conscience of the Court.
2. The verdict is contrary to the law.
3. The verdict is contrary to the evidence.
4. The verdict is contrary to the weight of the evidence.
5. The Court erred in granting the requested instructions requested by plaintiff and given by the Court as amended.
6. The Court erred in denying the instructions requested by defendants and not given by the Court.
7. The Court erred in amending the instructions requested by the defendants and given by the Court.
8. The Court erred in refusing to strike the testimony of the plaintiff, Leonard Damron, upon the voir dire as a predicate to the offer in evidence by plaintiff of three newspaper articles which plaintiff testified contained misstatements of

facts although the Court did refuse the offer in evidence of said articles.

9. The Court erred in allowing plaintiff's witnesses to testify over the objections of defendants as to unsworn statements by third parties not in the presence of either defendant as to the opinions and reactions of said third parties to the alleged defamatory article which was the basis for plaintiff's complaint.

10. The verdict "demonstrates a forbidden intrusion in the field of free expression" within *Beckley Newspapers Corp. v. Hanks* (1967) .... U.S. ...., 19 L ed 2d 248.

11. Although plaintiff himself injected in his complaint and in his evidence the alleged injury to him as a public official (mayor) and as a candidate for public office (tax assessor), the Federal Constitutional Law of Libel, as enunciated by the Supreme Court of the United States in *New York Times v. Sullivan* (1964) 376 U.S. 254, 11 L ed 2d 686; *Garrison v. Louisiana* (1964) 379 U.S. 64, 13 L ed 2d 125, 133-135; *Associated Press v. Walker* (1967) 388 U.S. 130, 18 L ed 2d 1094; and *Time v. Hill* (1967) 385 U.S. 254, 17 L ed 2d 456, 467; was not applied to the trial of the case and the verdict was not controlled by, or entered under, it.

12. There was no proper evidence of malice.

13. There was no proper evidence of express malice within the *Sullivan* rule.

14. The verdict is contrary to, and deprives defendants of, their rights under each the First and the Fourteenth Amendments to the Constitution of the United States.

15. "Government and public officials are 'fair game' to the free press." *Firstamerica v. Daytona Beach News-Journal* (Fla. 1967) 196 So.2d 97, 100.

16. The verdict was brought about by hearsay testimony.

17. There was no basis on which alleged damages for loss of gross profits as distinguished from net profits were allowed to go to the jury.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ORDER DENYING MOTION FOR NEW TRIAL AND SETTING SUPERSEDEAS BOND

The Defendants, Ocala Star Banner Company's, a Florida corporation and Loyal Phillips', individually, motion for new trial (and in the alternative for judgment in favor of the Defendants notwithstanding the verdict) coming on to be heard after due notice to the parties, and the attorneys for the respective parties appearing and arguing said motion, the Court finds:

1. That the verdict for the Plaintiff in the amount of $22,000.00 is not excessive, and is supported by the evidence.

2. That the decisions of the United States Supreme Court on libel actions as decided in the case of the New York Times vs. Sullivan, and subsequent decisions cited in Defendants' motion for new trial, relating to public officials or public figures in the official conduct of their office or position are not applicable to this cause of action which was founded upon a newspaper publication of the Defendants which was libelous per se and made no reference to the public offices held or sought by the Plaintiff.

3. That there is no error in the proceedings.

The Defendants' attorneys, after the Court orally denied Defendants' motion for new trial, announced they would seek an immediate appeal and requested an order of supersedeas and conditions of the bond to be filed, and the Court being fully advised in the premises, it is

ORDERED and ADJUDGED, that

1. Defendants' motion for new trial (and in the alternative for judgment in favor of the Defendants notwithstanding the verdict) be, and the same is, denied.

2. That upon the filing, within seven (7) days, by the above named Defendants herein of a supersedeas bond in the sum of $25,000.00 with good and sufficient sureties to be approved by the Clerk of this Court, and conditioned that the Defendants will make payment of all costs, damages and expenses in this cause which Plaintiff may sustain by reason of the stay of these proceedings, in the event the final judgment appealed from shall be affirmed or the appeal dismissed, shall operate as a supersedeas in this cause and shall suspend and stay all further proceedings in this Court under the verdict and judgment which have heretofore been entered herein until the determination of said appeal.

DONE and ORDERED in Chambers at Ocala, Florida, this 7th day of March, 1968.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1969.
Case No. K-86

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,
Appellants,

v.

LEONARD DAMRON,
Appellee.

Opinion Filed April 22, 1969. (221 So.2d 459).

An Appeal from the Circuit Court for Marion County.
D. R. Smith, Judge.

Loftin & Wahl and Greene, Ayers, Swigert & Cluster, for Appellants.

Wallace Dunn, for Appellee.

PER CURIAM

Appellant has appealed a final judgment entered pursuant to a jury verdict awarding damages to the appellee in a libel action.

The libel consisted of an item published in appellant's newspaper stating that appellee had been indicted for perjury by the federal government. As it turned out, the publication was false in that it was appellee's brother who had been so indicted and not the appellee himself. A directed verdict on the question of liability was granted, and the case went to the jury on damages only.

Appellant contends that this case is controlled by the recent pronouncements of the federal courts on the law of libel as it relates to the news media typified by New York Times v. Sullivan, 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, which in essence held that before a plaintiff may recover for libel from a newspaper, express malice must be shown. This principle seems to rest on the proposition that a newspaper has a duty to comment upon the manner in which our public officials perform the duties of their office and that in so commenting, the media is entitled to a greater latitude in bringing out matters concerning such officials which when spoken or written about a nonpublic official or figure might be libelous per se. We have no particular quarrel with that concept when its application is limited to cases giving rise to its emergence.

In the New York Times case, the court stated at 11 L. Ed. 2d 706:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood *relating to his official conduct* unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard

of whether it was false or not."

The court further stated at page 708:

"We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials *against critics of their official conduct.*"

And again in footnote 23 at page 708:

". . . that the allegations in the advertisement concerned what was allegedly his official conduct as Commissioner in charge of the Police Department. . . . they must be read as *describing his performance of his official duties.*"

We have underlined certain phrases in the foregoing excerpts from New York Times to demonstrate the basis of our impression that it is the public officer's official conduct or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's performance of duty that is so affected by the public interest which justifies the protection from libel actions afforded by the New York Times doctrine in absence of proof of malice. Indeed, the article itself makes no reference at all to the plaintiff's position as an officer or candidate for office. Hence, the record is devoid of any evidence to show that the appellant was acting in the area falling within the federal rule asserted.

An examination of the defamatory publication which gave rise to this case reveals that the plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and, hence, it does not come within the protection afforded by the rule announced in the New York Times case. It follows therefore that the trial judge correctly held that it was unnecessary for the plaintiff to show malice.

We have considered the other matters raised by appellant and find them to be without substantial merit.

AFFIRMED.

RAWLS, Acting Chief Judge; JOHNSON and SPECTOR, J.J., CONCUR.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1970

Case No. 38,658

OCALA STAR-BANNER COMPANY,
a Florida corporation,
and LOYAL PHILLIPS, individually,
Appellants,

-vs-

LEONARD DAMRON,
Appellee.

Opinion filed January 21, 1970 (231 So.2d 822)
An Appeal from the District Court of Appeal, First District
Harold B. Wahl of Loftin and Wahl, for Appellants
Wallace Dunn, for Appellee
PER CURIAM.

Review having been sought by direct appeal from the District Court of Appeal, First District, and argument having been heard and the record having been examined, it is our opinion and we hold that the cause sub judice is not within the orbit of the jurisdiction of this court as set forth by Section 4(2), Article V, Constitution of Florida. Therefore the cause is dismissed ex mero motu.

It is so ordered.

ERVIN, C.J., ROBERTS, DREW, ADKINS and BOYD, JJ., concur (SC 8)

FLORIDA RULES OF CIVIL PROCEDURE

1965 Revision

Effective January 1, 1966
Supreme Court of Florida
Opinion 178 So. 2d 15
Rule 1.11 at pages 16, 19 and 20

RULE 1.11. DEFENSES.

(a) *When Presented.* A defendant shall serve his answer within twenty days after service of original process and the original pleading upon him, or not later than the date fixed in a notice by publication, which date shall be not less than twenty-eight nor more than sixty days after the first publication of the notice. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. The plaintiff shall serve his answer to a counter-claim within twenty days after service of the counterclaim, or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule (except a motion for judgment on the pleadings) alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after service of the more definite statement.

(b) *How Presented.* Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the respon-

NOTE: Although the Florida Rules of Civil Procedure have been amended since January 1966, Rule 1.11 (b) has not been amended except it is now re-numbered as Rule 1.140 Defenses, in re Florida Rules of Civil Procedure 1966 Revision, 187 So. 2d 598, Page 605.

sive pleading thereto if one is required; except that the following defenses may be made by motion at the option of the pleader: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a cause of action, (7) failure to join indispensable parties. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. *The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not so stated shall be deemed to be waived* except any ground showing that the court lacks jurisdiction of the subject matter may be made at any time. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

(c) *Motion for Judgment or Decree on the Pleadings.* After the pleadings are closed, but within such time as not to delay the trial any party may move for judgment or decree on the pleadings.

(d) *Preliminary Hearings.* The defenses 1 to 7, subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment or decree mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof shall be deferred until the trial.

(e) *Motion for More Definite Statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite

statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of Defenses.* A party who makes a motion under this rule may join with the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) *Waiver of Defenses.* A party shall be deemed to have waived all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a cause of action, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter. See Rule 1.39. The objection or defense, if

made at the trial, shall be disposed of as provided in Rule 1.15(b) in the light of any evidence that may have been received.

Committee Note: Substantially the same as Common Law Rule 13 and Equity Rule 33. Subsection (b) is amended to restore demurrer practice to the extent of requiring the specific grounds of defensive motions to be stated.
(Emphasis supplied)

FLORIDA RULES OF CIVIL PROCEDURE

1966 Revision

Effective January 1, 1967
Supreme Court of Florida
Opinion 187 So. 2d 598
Rule 1.470 at Page 626

RULE 1.470. EXCEPTIONS UNNECESSARY.

(a) *Adverse Ruling.* For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error.

(b) *Instruction to Jury.* No later than at the close of the evidence, the parties shall file written requests that the court charge the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the charges to be given. At such conference all objections shall be made and ruled upon and the court shall inform counsel of such general charges as it will give. *No party may assign as error the giving of any charge unless he objects thereto at such time or the failure to give any charge unless he requested the same.* The court shall charge the jury after the arguments are completed.

(c) *Orders on New Trial, Directed Verdicts, etc.* It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

Committee Note: Common Law Rule 39.

(Emphasis supplied)

ORIGINAL RECORD

VOLUME II

* * *

[TT 7] TRIAL PROCEEDINGS

Plaintiff's Testimony

LEONARD DAMRON, being first duly sworn by the Clerk of the Court to tell the truth, testified as follows:

Direct Examination

Q. BY MR. DUNN: Will you please state your full name? A. BY THE WITNESS: Leonard Damron.

Q. Mr. Damron, are you the Plaintiff in this action? [TT 8] A. Yes, sir.

Q. Where do you reside? A. In Crystal River.

Q. That Crystal River, Florida? A. Yes, sir.

Q. What period of time have you resided at Crystal River, Florida? A. Approximately thirteen years.

Q. What is your occupation, Mr. Damron? A. I'm a garage owner.

Q. For what period of time have you been a garage owner? A. Just---in Crystal River, thirteen years, approximately.

Q. Mr. Damron, have you been a subscriber to the Ocala Star-Banner? A. Yes, sir.

Q. For what period of time? A. Oh, probably six, seven years. I've been a *pre*scriber and I've bought the paper, usually daily.

Q. Have you acquired the paper daily? A. Yes, sir.

Q. Continuously during this period of time? A. Up til lately I haven't---haven't took the paper.

Q. Aside from being a garage owner in Crystal River, [TT 9] Florida, during the past thirteen years, what other activity have you been engaged in? A. I've been Mayor for four term---four terms, four full terms.

Q. And in this capacity have you attended Council meetings? A. Yes, sir.

Q. Regularly? A. Yes, sir.

Q. Mr. Damron, in the course of your attendance at Council meetings, have you had an occasion to read the Star-Banner on matters reported in these Council meetings? A. yes, sir; I read it daily. I read all the articles that's published about Crystal River, or most all of them.

Q. As to the articles that are published in the Star-Banner that affect you personally, what, if anything, did you do with them? A. Well, I kept a scrap book and---to where I could always refer back to my activities as Mayor and all the other civic organizations that I belong to.

Q. Mr. Damron, comparing the factual situation of the meetings and functions which you attended with the reports that appeared in the Ocala Star-Banner, did the Ocala Star-Banner report a factual state of account?

BY MR. AYRES: Just a minute, may it please the Court--[TT 10] A. No, sir---

BY MR. AYRES: To which the Defendant objects on the ground that it calls for a conclusion of the witness and invades the province of the Jury.

BY THE COURT: The objection is sustained.

Q. BY MR. DUNN: Mr. Damron, I show you a copy of the Ocala Star-Banner dated April 18, 1966, previously marked--marked as Plaintiff's Exhibit Number Three and ask you if you'll state what this paper contains?

BY MR. AYRES: Just a minute, may it please the Court. The paper speaks for itself.

BY THE COURT: Objection sustained.

Q. BY MR. DUNN: I ask you, Mr. Damron, if this article---may I at this time, Your Honor, read this into the evidence for the Jury?

BY THE COURT: Yes, sir.

BY MR. DUNN: Ladies and Gentlemen of the Jury, at the commencement of this action Counsel stipulated, and this is part of the record now, the publication which is being sued upon as it did appear in the Ocala Star-Banner on Monday, April 18, 1966. The article was captioned, "Damron's Case Passed Over to Next U. S. Court Term"; date line in Inglis. A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell [TT 11] in Gainesville. Damron was indicted by a Federal Grand Jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple. Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962. Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Rich Sell who was allegedly in the Isaac Walton Lodge. According to officials, the Finley's interfered with the offic*ials*, were arrested and charged with interfering with arrest. A conviction obtained in County Court has been upheld throughout *the* appeal to the Florida State Supreme Court. The civil suit which followed was filed under an old little used Federal statute in which the Finley's charged former Sheriff J. W. Turner and Cason with the violation of their civil rights. Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958, several

years prior to the incident, but numerous other witnesses summonsed by the plaintiff gave testimony saying that Mrs. Finley had not previously worn a brace. Damron was released on a $2,000 bond following his arrest by Federal Marshalls on January 27th.

Q. BY MR. DUNN: Mr. Damron, is this a true statement? A. No, sir; it's not.

Q. Would you please tell the Jury where it is false? [TT 12] A. I didn't hear you, sir.

Q. Please tell the Jury in what why this article is false? A. It says "Damron" and named Leonard---Leonard Damron for perjury, which I have never been charged with perjury or any other crime.

Q. Thank you, Mr. Damron. Immediately after you saw this article published in the newspaper, what did you do? A. I was so shocked that I---I didn't know what to do, Mr. Dunn. In fact, I was just stunned. I felt like it had ruined me.

Q. Ruined you in what way, Mr. Damron? A. Well, I was running for Tax Assessor at that time, and I'd already covered probably two-thirds of the County from door to door with political speeches, and running ads in the paper, and I was so upset that I was just---I couldn't sleep; I couldn't eat, and I---later on that night after I received the paper I called you and asked for your advice.

Q. What did you then do? A. I wrote the Ocala Star-Banner a letter the next morning asking them would they---for a retraction.

Q. Is this a copy of the letter that was written to the Ocala Star-Banner? A. Yes, sir.

BY MR. DUNN: At this time, Your Honor, I'd like to [TT 13] read this into evidence.

BY THE COURT: It's all right with me.

BY MR. DUNN: Ladies and Gentlemen of the Jury, this is a copy of a letter previously admitted into evidence that Mr. Damron has testified he wrote the Ocala Star-Banner.

Crystal River, Florida, April 19, 1966. Mr. Loyal Phillips, Publisher, Ocala Star-Banner, P. O. Box 490, Ocala, Florida, Zip 32670. Dear Mr. Phillips: There appears on Page Nine of your publication dated Monday, April 18, 1966, delivered at Citrus County an article entitled, "Damron's Case Passed Over to Next U. S. Court Term". This article names the Defendant a local garage owner, Leonard Damron. You are advised that the undersigned Leonard Damron, has never been charged with the crime of perjury, is presently the Mayor of the Town of Crystal River, and is a candidate for Tax Assessor of Citrus County, Florida. The statements contained in the aforesaid article are false and defamatory because they allege a charge against the undersigned which is untrue. Very truly yours, Leonard Damron.

Q. BY MR. DUNN: Mr. Damron, how did you transmit this letter to the Ocala Star-Banner? A. I sent it receipt requested---received receipt requested.

Q. I show you Plaintiff's Exhibit Number One and ask you what this is? [TT 14] A. This is the receipt that I got from the Post Office.

BY MR. DUNN: Ladies and Gentlemen of the Jury, this is a return receipt signed by Mr. Loyal Phillips of the Ocala Star-Banner. I give you these items for your inspection.

(Thereupon the Jurors examined certain items furnished by Mr. Dunn).

Q. Mr. Damron, have you ever had an occasion to call the Ocala Star-Banner regarding its news publications? A. Yes, sir; I've called the Ocala Star-Banner.

Q. When did you call them? A. Back somewhere '65; I believe about October, if I'm not mistaken.

Q. Who did you talk with? A. I talked with Mr. Loyal Phillips.

Q. Do you know who Mr. Phillips is? A. Yes, sir---

Q. ---or was at that time? A. Yes, sir; he's Vice President and Publisher. That's the one that I asked to speak to.

I asked to speak to the General Manager, Mr. Dunn, and they got me on the phone---or got him on the phone.

Q. What was the substance of your conversation with Mr. Phillips? A. I asked him to send someone to Crystal River to publish the news as it happened, true facts, and not editorial on the subject that they write on.

Q. What prompted you to call the Star-Banner? A. So many mistakes in the paper.

BY MR. DUNN: Will you mark these three items for identification, please?

(The instruments were marked by the Clerk) [TT 16]

(The instruments were examined by Mr. Ayres).

Q. Mr. Damron, I ask you what kind of mistakes do you have reference to? A. Well, printing objects that's not true.

Q. I show you Plaintiff's Exhibits marked for Identification Numbers Five, Six, and Seven, and ask you what they are? A. These are articles that---published in the Ocala Star-Banner that I cut out of the paper.

Q. Are the statements contained in these articles true? A. No, sir.

Q. Will you please state to the Jury in what way these articles are not true? A. Well, here's one article here, says: Both Damron and Kenoyer have been in support of the Federal financing plan offered the city. They walked out of the meeting yesterday after a heated discussion.

Q. What is the date of this article? A. This was October 1st, 1965.

Q. Is that statement true? A. No, sir. I have never walked out of a regular council meeting.

Q. I show you a second article and ask you what it is? A. It says: Mayor Damron has clashes with [TT 17] the council over the meeting Monday night but did not oppose a motion by Councilman Dave Evans which simply asked that all *accounts* against *Kenoyer* be *received;* passed unanimously.

Q. Is that statement true? A. It's false because---just because I have disagreed with the Council, I haven't clashed or haven't had these verbal duals that's been mentioned and all that.

Q. I show you a third article and ask you what this is? A. This is a article I cut out of the Ocala Star-Banner dated October the 5th, 1965, which states---you want me to state---

Q. If you will state---is the article true? A. It's untrue.

Q. In what respect? A. It says: Dunn presently paid one hundred dollars a month retainer and forty dollars plus mileage--forty dollars a meeting it's supposed to be, plus mileage---for each meeting he attends.

Q. Is this statement true? A. No, sir.

Q. In what respect is it not true? A. The Council paid Mr. Dunn one hundred dollars a year retainer fee and this was another way that she had---that this was blown up. [TT 18]

Q. Then, is your testimony that each of these article are incorrect? A. That's right.

BY M. DUNN: Your Honor, I would like at this time to introduce Plaintiff's Exhibits marked for Identification as Five, Six, and Seven be introduced into evidence at this time.

BY MR. AYRES: Objected to as irrelevant and immaterial, not constituting evidence of any defamatory charges against this Defendant, as being outside of the issues of this cause, not supported by any allegations in the Complaint, and putting in false and immaterial issues in this case.

BY THE COURT: Ladies and Gentlemen, I'm going to ask you to retire to the juryroom for a moment, please.

(Thereupon the Jurors left the courtroom at 1:35 p.m., after which time the following proceedings were had out of the presence of the Jury):

BY THE COURT: What gets me is you've permitted this testimony to go into evidence but you don't admit the exhibits into evidence. Where is the inconsistency?

BY MR. AYRES: Well, there's nothing, really, to rebut because this is on the voir dire on the admissibility of these. That's the reason we didn't object. This is on the voir dire on the admissibility of these three proffered exhibits, Your Honor. This is not testimony in chief aside from these [TT 19] exhibits. It's related solely to these exhibits, and this is on the voir dire qualifying them, nothing else, and it arises at this time.

BY MR. DUNN: Your Honor, I propose to introduce these items into evidence based on two fundamental principals, one of which, I believe, is cited in the Brown-Fawcett case which states that no one is going to advertise its libels or its mistakes in advance, and the second is a rule that is in the Brautigam versus The Miami Herald case, which says that a newspaper is required to use a high degree of care in the publication of the articles it composes. Now, based on that, and the prior testimony of Mr. Damron that he called the Star-Banner and complained of these articles that were being printed that were incorrect, I feel that these items are admissible to show the conduct of the Defendant in this case in continuing not to examine the information that it was receiving from Crystal River in the preparation of the articles that went into its newspaper. Now, this is---this---this all---- we can't just take one article and build a case and say this is the only thing we're going to talk about. We've got to show what the cand.or of---the tenor of this newspaper was, its own recklessness and carelessness. I mean, Mr. Ayres wants to talk about in--- his defense, as a matter of fact, that this was just a mere inadvertence, and when the newspaper was publishing errors and was called, and Mr. Damron has already testified was told [TT 20] that it was printing errors, it still went right on printing them.

BY THE COURT: Well, I'm going to refuse their introduction into evidence. You've gotten your testimony before the Jury and I think that's sufficient. I think if we put too

many articles into evidence we will confuse the issue before the Jury.

BY MR. DUNN: All right, sir.

BY THE COURT: But the article that you have admitted into evidence is---is admitted that it's libellous per se, and---

BY MR. DUNN: Yes, sir.

BY THE COURT: Anyway, call the Jury back.

(Thereupon the Jurors returned to the courtroom at 1:40 p.m., at which time the following proceedings were had in the presence of the Jury):

BY MR. AYRES: Have you ruled?

BY THE COURT: Yes.

BY MR. AYRES: In the presence of the Jury?

BY THE COURT: No; I don't think it's necessary, but I'll say that I denied the introduction of those documents into evidence.

BY MR. AYRES: Now, based on that, Your Honor, the Defendant moves the Court to strike and to withdraw from the consideration of the Jury all of the answers given by Mr. Damron [TT 21] in response to questions on the voir dire in an attempt to qualify these articles because the articles themselves having been refused in evidence, the testimony with regard to them likewise becomes utterly immaterial and would be prejudicial to the Defendant if it's allowed to remain in the record and to be considered by the Jury.

BY THE COURT: Motion to strike is denied.

BY MR. AYRES: All right, sir.

Q. Mr. Damron, what was the state of your mental health prior to April 18, 1966? A. It was good.

Q. After the article which was published on April 18, 1966, what was going on in your mind?

BY MR. AYRES: Just a minute, may it please the Court. That calls for the mental processes of the witness and we object.

BY THE COURT: The objection is sustained.

Q. Did the article of April 18, 1966, in any way affect you, Mr. Damron? A. Yes, sir; it disturbed me so---so much that I almost went to pieces. My wife did go to pieces; my children coming home from school was asking, Daddy, what are you in to---

BY MR. AYRES: Just a minute, may it please the Court; objected to as hearsay, and move to strike the answer.

BY THE COURT: Objection overruled. [TT 22]

Q. BY MR. DUNN: Did you understand what was happening to you during this period of time? A. No, sir; I didn't.

BY MR. AYRES: Just a minute, may it please the Court. We object to the question and move to strike the answer as to what his understanding was or what happened to him; calls for a mental process and conclusion of the witness.

BY THE COURT: Objection overruled.

Q. BY MR. DUNN: Mr. Damron, how long did this condition continue? A. I don't know whether I'm over it yet or not.

Q. How, if any, in any way were your normal duties impaired as a result of this article and your mental attitude?

BY MR. AYRES: Just a minute, may it please the Court. That calls for a conclusion of the witness.

BY THE COURT: Objection is overruled.

BY MR. DUNN: You may answer.

BY THE WITNESS: Will you ask me that again?

Q. BY MR. DUNN: How, if at all, were your normal duties affected after this publication? A. I was so disturbed that I felt like that I wasn't meeting the public properly when I was going door to door, and I would see large groups of people on the street. They would be talking, laughing; I'd walk up. They'd act like I had the plague, and in fact while I was making the rounds I even had a [TT 23] door slammed in my face after I told them who I was.

Q. Who slammed the door in your face, Mr. Damron? A. It was a lady in Inverness. I don't know her name.

Q. What were you doing at her door? A. I was asking for her support for Tax Assessor in the race.

Q. In what other ways were you affected as a result of the publication of this article? A. I was embarrassed. It hurt my business. It---in fact, it seemed like it changed my whole life at that time. I realize it now.

Q. How long did this condition continue as---as you have described in meeting the public? A. I think I'm gradually getting over it. In fact, I'm---I'm getting better.

Q. Did any of these things occur prior to publication of this article? A. No, sir; I was always accepted real well.

Q. Now, Mr. Damron, you testified that you were a candidate for Tax Assessor? A. Yes, sir.

Q. During what period of time were you running for this office? A. I qualified for the office May the 1st, 1966. [TT 24]

Q. May the 1st? A. No; March the 1st, 1966.

Q. And when was the election held? A. May the 3rd, 1966.

Q. Wasn't it this time---during this time this article was published? A. Yes, sir; the article was published the 18th of April, 1966.

Q. Immediately after the publication of this article, what was the reaction of people to you from whom you would solicit votes? A. Very cold.

Q. What did you try to do to overcome this situation? A. I---I thought I'd overcome it by just working that much harder. I worked from daylight til dark, and then after dark to the business places that I could still meet the people. I carried this paper here and the one that was printed the next day around with me to show the people it wasn't---wasn't me that this paper was even referring to, and--

Q. And what was their reaction? A. They were still

cold. Some of them act like they believed it; some of them didn't.

Q. Were you able to overcome the effect of this publication on your candidacy as Tax Assessor? A. No, sir. [TT 25]

Q. What was the result of the election? A. I got beat. Mr. Ed Tolle won the election. I think I received four hundred; I'd have to see the exact figure.

Q. I show you Plaintiff's Exhibit Number Four previously admitted into evidence and ask you if this is a true statement of the results of this election? A. Yes, sir.

BY MR. DUNN: For the Jury's convenience, this is a tabulation of the Polls and Precincts in Citrus County, Florida, of the election for the First Primary held on May 3rd, 1966, showing the tabulation of total votes, Mr. Leonard Damron 454, Robert Gilstrap 1,624, and Mr. Edgar Tolle 2,279.

(The Jurors examined the Exhibit).

Q. BY MR. DUNN: Now, Mr. Damron, you previously testified that you had also held office as Mayor of the City of Crystal River; is this true? A. Yes, sir.

Q. I believe you also testified that you had run for this office on four separate occasions? A. Yes, sir; that's---I run for five times. I fulfilled four full terms. I filled a unex----one term whenever Mayor Dumas passed away. I run for office and finished his term.

Q. In each of these elections, by what vote did you exceed your opponents? [TT 26] A. I had three opponents the first time. I "liked" 46 votes getting more than all three of them put together. Would you hand me that? I can't remember all of them, Mr. Dunn. That on top. (The witness was furnished a certain instrument by Mr. Dunn).

Q. And on the succeeding elections? A. I liked 20 votes getting three to one over my opponent the second time I run. The third time I run I didn't have any opponent at all.

Q. And the fourth time you ran? A. And the fourth---fourth time I run I liked 79 votes getting two----two to one.

Q. Now, Mr. Damron, when did you .... Mr. Damron, after the publication of the article which you're testified to as the Plaintiff's Exhibit Three, after this was published in the newspaper did you run for the office of Mayor of Crystal River again? A. Yes, sir; I run sometimes later after the article was published.

Q. When was this? A. It was---let me see that paper. That's after the publication.

Q. After the publication of this article did you run for the office of Mayor of Crystal River? A. Yes, sir; December the 13th, 1966. [TT 27]

Q. Is this the date of election? A. Yes, sir.

Q. During your campaign for this office, did you meet the same voter reaction as you had in prior campaigns for this office?

BY MR. AYRES: Objected to as leading, may it please the Court.

A. No, sir---

BY THE COURT: The question is leading.

Q. BY MR. DUNN: What, if any, voter opposition did you meet in campaigning for this office in the year 1966 that you did not meet in prior years? A. The vote was---the public was a little cooler than they were to start with, whenever I run before. They seemed like they wasn't as friendly as they had prior to that year.

Q. And by what were you elected in that election? A. I won by one vote.

Q. Now, then, Mr. Damron, I show you Plaintiff's Exhibit Number Four, which is a tabulation of the Citrus County ballots, and ask you to compare the ballots in those precincts which are located in or carry the vote of Crystal River with the vote that you received in any of these prior elections of the City of Crystal River which you testified to and ask you to tell the Jury what was the total vote that you

received in [TT 28] the Tax Assessor election in 1966? A. Well, in Tax---Tax Assessor, Mr. Dunn, has a lot bigger variety, lot bigger than just the Mayor, too. I received 137 votes with both precincts, North Crystal River and South Crystal River, which has a lot more voters in it than of the Mayor's race.

Q. What was the smallest number of votes that you received in the Town of Crystal River in any of your elections? A. 149.

Q. Now, then, Mr. Damron, as to the office of Tax Assessor for which you were running, do you know what the annual compensation is in that office? A. $9,000 a year.

Q. Mr. Damron, you previously testified, I believe, that you were a garage owner in Crystal River? A. Yes, sir.

Q. How long have you been in this business at this location? A. Approximately thirteen years.

Q. What has been your experience with regards to sales in this business prior to April 18, 1966? A. 1966; they've dropped off prior to the following---the previous year.

Q. Have you prepared a summary of your sales for the twelve-year period---excuse me---twelve-month period prior [TT 29] to April 1, 1966? A. Yes, sir.

Q. Have you prepared a compilation of your sales record subsequent to April 18, 1966, for a twelve-month period? A. Yes, sir.

Q. Was---from what record was this summary prepared? A. From my books.

Q. These your books of original entry? A. Yes, sir.

Q. Were these books prepared under your supervision? A. Yes, sir.

Q. Did you observe any particular difference in the summary of sales prior to April 18, 1966, and the twelve-month period subsequent to April 18, 1966? A. Would you rephrase that again? I didn't get you.

Q. Did you note any difference in the sales in your busi-

ness between the twelve-month period prior to April 18, 1966, and the twelve-month period subsequent to April 18, 1966? A. Yes, sir.

Q. What was that difference? A. Four thousand---hand me that. I have it wrote right there on that top sheet there, Mr. Dunn. (The witness was furnished a certain instrument by Mr. Dunn). $4,623.70.

Q. Now, Mr. Damron, did you notice any difference in your sales immediately after publication of this article? [TT 30] A. Yes, sir. In March, 1966, I had a gross sale $4,345.69, April, $2,508.95.

Q. Mr. Damron, what type of business did you receive prior to publication of this article insofar as patronage is concerned? A. It was very good, Mr. Dunn. We---I had a lot of work. In fact, I had to turn work away. After the article come out, I had to take everything come along.

Q. Has your business recouped? A. It's coming up, yes, sir.

Q. Back to the progressive scale that it was prior to publication of the article? A. I couldn't---I couldn't answer that up to date. I didn't go any farther than---I would say that the work is not as plentiful, no, sir, as it was before.

BY MR. DUNN: I have no further questions.

Cross Examination

Q. BY MR. AYRES: Isn't it true, Mr. Damron, that your business depends to a considerable extent upon the tourist business; aren't you located on U. S. Highway 19 running through Crystal River? A. Yes, sir; I do a lot of tourist business.

Q. And it fluctuates, then, with the tourist flow, doesn't it? A. Yes, sir; but usually--- [TT 31]

Q. And in the season you get better business than you do in the off season; is that generally true? A. No, sir; I couldn't say that, because local business always fills in to whenever---

Q. You mean to say that no matter how much additional tourist business you get in---during the season that during the off months you get more local business so that it evens it out? A. It usually does, yes, sir; it'll even up pretty good.

Q. And that fact is, isn't it, Mr. Damron, that while you say, and you're here suing the Star-Banner and Mr. Phillips for damages, you say that this loss of business was due to this article; you don't know of your own positive knowledge that that's true, do you? A. What other could you lay it on to, Mr. Ayres?

Q. I don't know, Mr. Damron. I'm just asking whether you can say positively that any business loss you've suffered is due to this article alone and solely? A. I--I would assume that it would because of the vote that I got and everything concerning it, yes; I---I couldn't no one can definitely say that that would be the sole reason.

Q. Yes, sir. Now, I believe you said that before this article ran you had a lot of work back logged? A. Yes, sir; I---

Q. And after it ran you no longer had your work [TT 32] back logged to that same extent? A. I have to take it as it comes now, yes, sir.

Q. I understand that, but this was your testimony, as I understand? A. Yes, sir; I've sent work to many other garages and service stations.

Q. Isn't it a fact, Mr. Damron, that during the time you were campaigning for Tax Assessor you were in and about your business very, very little? A. No, sir; I would stop in once and twice a day regardless of---of where I would be in the County.

Q. I understand that, but you weren't there full time, were you, because you were going, as you testified, door to door over the County? A. That's right, yes, sir.

Q. So, you might drop in for half an hour in the morning and evening, possibly, as you happened to come through Crystal River, but you weren't there full time or anything

like it, were you? A. No, sir; I wasn't there full time, no, sir.

Q. As a matter of fact, your brother, James Damron, was running the business for you, or operating it for you, during the whole time that you were campaigning for this office, wasn't he? A. He has worked for me off and on for quite some [TT 33] time, Mr. Ayres.

Q. I understand that, but what I'm asking you if it isn't a fact that you had him over there running the business for you during the time that you were campaigning for this office of Tax Assessor? A. Yes, sir, and I had another man helping him, too.

Q. I understand, but he was there; he left his business in Inglis and came over there and filled in for you while you were out campaigning in effect. Isn't this what happened? A. No, sir; he come with me in Decem---let's see; January---January of---

Q. Of '66? A. ---'66; yes, sir.

Q. And the election was on May the 3rd of that same year? A. May 3rd; right.

Q. So, he was there January, February, March, April and the first three days of May? A. That's right.

Q. Now, the fact is, isn't it, Mr. Damron, that in the issue of the Star-Banner of Sunday, January the 30th, there had been a long, long story about the charge made against your brother, James Damron, being charged with perjury in the Federal Court; isn't that a fact? A. Yes, sir; it was in the paper there. [TT 34]

Q. I show you a copy---a page of the Ocala Star-Banner which has been marked for Identification in the taking of depositions herein as the Plaintiff's Exhibit A and ask you to read that story, if you will, and state whether that story did run on the date that appears on that page? A. Yes, sir; it run on that page. I've already---

Q. All right, sir; and on the date that story ran, James

Damron had been working there full time in your garage in Crystal River for a month, hadn't he? A. I don't know whether--- what you're talking about, a month. He was there when it ran, yes, sir.

Q. All right; and if there's any free conversation resulting from a story about a criminal charge, there certainly had been a lot of talk about him, hadn't there? A. Well, I don't think he's known as well as I was, Mr. Ayres.

Q. Are you telling us that it wasn't generally known in Crystal River that you had a brother in Inglis who ran a filling station and garage in Inglis and who worked with you from time to time; are you telling us that? A. Yes, sir; it--- it was known to some people that I had a brother than run a station in Inglis.

Q. Now, when this story of which you complain ran, the story that has been admitted in evidence as---when this story ran of which you complain, it's been marked for Identification [TT 35] as Defendants' Exhibit B, I want you to look at that, look at this other story on your brother, Plaintiff's Exhibit Three, I want you to compare those two stories very carefully, if you will, Mr. Damron, and tell me if---whether or not the material contained in both of those stories isn't exactly the same in substance except for the single item of the first name of the party charged, nothing else? A. Yes, sir, Mr. Ayres; that's why I was so surprised them running them--- running this story at the time they did.

Q. Well, now, the fact is, of course, that Mr. James Damron, your brother, had pled not guilty in Federal Court and his case had been passed over. That story was factual, wasn't it? A. It was factual, sir, but his case was passed over the 5th and not the 18th.

Q. Be that as it may, it is---it is a true account of what happened? A. It wasn't up-to-date news, Mr. Ayres.

Q. And both of these stories are date-lined where, from where, Mr. Damron? A. It says---yes, sir, Inglis, right here,

real small print.

Q. And does the other one say the same thing in real small print? [TT 36] A. Yes, sir.

Q. So, they both came out of Inglis and not out of Crystal River? A. No, sir; that come out of Crystal River.

Q. Which came out of Crystal River, begging your pardon? A. The paper did. That's the ones I've----

Q. All right; how about this other one that I showed you, the story of January 30th on your brother, are you saying that one didn't come out in Crystal River? A. No; came out in Crystal River, yes, sir.

Q. But they were both date-lined Inglis; both stories? A. Yes, sir.

Q. All right, sir; now, as you've testified, the next day following your consultation with your attorney you wrote a letter to the Star-Banner calling their attention to the fact that this story of April 18th was not true insofar solely as to the first name of the party given; is that correct? This is a letter, I believe, which is Plaintiff's Exhibit Two. A. Yes, sir; this is the letter I wrote the Ocala Star-Banner.

Q. Now, when did they receive that letter, Mr. Damron, as appears with the return receipt? A. The 6th, the 20th, '66. [TT 37]

Q. So, they got that letter on April the 20th--- A. Yes, sir.

Q. Two days after the story ran on April 18th? A. Yes, sir.

Q. Now, I believe you mentioned that after the story appeared, fifteen days that the campaign remained up to May the 3rd, or fourteen days or two weeks, that you carried both this story of April 18th and the correction they printed with you when you went to knock on doors and see the voters; right? A. Yes; the one naming me and the one the following day, which would be the 19th. I took it with me, and that's the one in real small print.

Q. I show you now a page of the Ocala Star-Banner for Tuesday, April 19th, 1966, on which there appears an item in the lower right hand corner headed "A Correction". Is that the correction that you referred to? A. Yes, sir; this small one right here.

Q. All right, sir; now, that was run by them before they ever got your letter, wasn't it, of their own motion and voluntarily? A. I imagine it was.

Q. And they---so they caught their own mistake? A. Well, they should.

Q. And they did, didn't they, because they didn't [TT 38] have your letter until the next day, the 20th; right? A. No, sir.

Q. All right; now, that isn't all. Isn't it a fact, Mr. Damron, that not content with running that correction that when they did receive your letter, and also got a letter from one of your friends and supporters, Mr. Glen A. Bland--- A. Yes.

Q. ---that on April the 24th, which was Sunday, when the paper probably gets its widest readership, you know, they ran your letter in its entirety except for one paragraph with the heading---

BY MR. DUNN: Your Honor, we object; it's outside the scope of direction examination.

BY THE COURT: Objection is sustained.

Q. BY MR. AYRES: All right. You wrote them this letter, didn't you, Mr. Damron, the one that you---and you got the return receipt back? A. Yes, sir; I wrote the letter, Mr. Ayres, and they didn't print it in the paper the way that I wrote the letter.

Q. But they did print the letter in the paper, didn't they---- A. No, sir; not---

Q. ----with the exception of the last paragraph? A. Not in full, no, sir. [TT 39]

Q. With the exception of the last paragraph? A. That's right; they left the last paragraph off.

Q. If you'd like to check it? A. Yes, sir; I've already checked it, sir.

Q. They left out one paragraph? A. Yes, sir.

Q. Other than that they printed it in full; right? A. That's right.

Q. And they---they preceded it with the heading "Wrong Name", didn't they?

BY MR. DUNN: Your Honor, we object to this line of questioning; it's not part of the direct examination.

BY MR. AYRES: It is now, I believe, Your Honor.

BY THE COURT: The witness volunteered his information.

BY MR. AYRES: Yes, sir.

Q. BY MR. AYRES: I show you now this copy of the Ocala Star-Banner, edition of Sunday, April the 24th, Page Five, and ask you if two letters that appear in the upper left Five, and ask you if two letters thta appeal in the upper left hand corner of that paper did run, to your knowledge? A. Yes, sir; two the Editor; yes, sir.

Q. And they ran your letter with the exception of one paragraph, in full, and ran Mr. Bland's letter in full and they printed an Editorial apology and they headed it "Wrong Name" and they said "So Sorry", didn't they? [TT 40] A. Yes, sir; they said that. I would think they would print the whole thing, though.

Q. Yes, sir; all right, now---but you say that because of this publicity, although your brother had gotten a pretty good dose ahead of you, because of this publicity and this publicity alone you lost the race of Tax Assessor, Citrus County; is that correct? A. Yes, sir.

Q. And you say that's the reason that you only got 454 votes as compared to Mr. Gilstrap's 1,624 and Mr. Tolle's 2,279; right? A. Yes, sir.

Q. All right; now, of course, you went through that campaign and spoke at the rallies? A. Yes, sir.

Q. In the speeches by you and the other candidates did

you and the other candidates state your qualifications for this office? A. Yes, sir.

Q. Did you hear Mr. Tolle tell the voters at these rallies---

BY MR. DUNN: Your Honor, this again is outside the scope of direct examination. He's going into the qualifications of the candidates on this election.

BY THE COURT: Objection is overruled. [TT 41]

Q. BY MR. AYRES: Did Mr. Tolle tell the voters of Citrus County that he had been for many years a realtor and appraiser practicing at Homosassa and Crystal River? A. I don't know what---he probably did; he was a real estate man.

Q. And has been for some years, to your knowledge, hasn't he? A. Yes, sir; he was a builder at one time, too.

Q. He had a real estate office and registered real estate broker under the Laws of the State of Florida, to the best of your knowledge, wasn't he, Mr. Damron? A. Yes, sir; he was a real estate man.

Q. All right; in addition to that he was during this campaign the Deputy Tax Assessor of Citrus County, wasn't he? A. He worked in the Tax Assessor's Office, yes, sir.

Q. Yes, sir; in fact, his brother-in-law, who was ill at the time, was the Tax Assessor; right? A. Yes, sir.

Q. And he made these qualifications that he had known to the voters, didn't he, in every way that he could? A. I really couldn't tell you that. That would be my---my opinion and---that's not the facts.

Q. Well, I'm not asking for an opinion. I'm just asking you did you hear him say these things at these rallies? [TT 42] A. I---I couldn't answer that question. Your said he made it known; I don't know.

Q. Well, did he tell them about it, Mr. Damron? A. I don't know what he told---

Q. You didn't listen to his speeches on the platform? A. I was concerned about mine and---

Q. You didn't listen to your opponents' speeches? A. Yes,

sir; I listened to them, but I couldn't---

Q. Did he talk about his--- A. ---tell you all of what he said, no, sir.

Q. Well, I'm sure of that, but didn't he talk about his qualifications, the fact that he was a broker and that he was working in the Tax Assessor's Office and, therefore, he knew this job and was qualified to fill the post? A. Yes, sir; he probably told them the same as I did.

Q. Yes, sir; all right. Now, the second man in that race was a Mr. Robert Gilstrap; is that correct? A. Yes.

Q. Was he holding office at that time, Mr. Damron? A. Yes, sir; he was holding a County office.

Q. Was he in fact Chairman of the Board of County Commissioners? A. I believe so, yes, sir.

Q. And had he served as a County Commissioner for [TT 43] twelve years? A. I believe so.

Q. And been elected County-wide in Citrus County three times? A. I believe so.

Q. So, it would be fair to say, wouldn't it, that he was well and widely known to the voters of Citrus County; isn't that true? A. I would say he was known, yes, sir.

Q. All right, sir; and did he have any background, Mr. Damron, as a real estate appraiser or broker, to your knowledge, Mr. Gilstrap? A. To my knowledge, no.

Q. Actually, he operates a furniture store in Homosassa, doesn't he? A. No, sir.

Q. Are you sure? A. Homosassa?

Q. Well, I thought he so testified. Well, does he operate a furniture store, then, somewhere? A. He owns a furniture store in Inverness.

Q. It is in Inverness; all right. Now, but he had no special qualifications for the office other than the fact that anyone can run who is a citizen and voter; isn't that true? A. No, sir; not anyone can run unless you are [TT 44] qualified.

Q. A citizen and voter, that's the only qualifications that

the Law prescribes; isn't that true? A. Yes; you said "anyone"; yes, sir.

Q. All right; now, in your own case, Mr. Damron, had you ever served as a---ever been employed or been in the business of being a real estate broker or appraiser, anytime? A. I have purchased land.

Q. For your own account, but you haven't been in the real estate business as such as a registered real estate broker, have you? A. No, sir.

Q. And the business of making appraisals of land? A. No, sir; except as Mayor of Crystal River I have had a lot of experience with real estate.

Q. Well, I mean, you were in about the same situation, then, as Mr. Gilstrap was as County Commissioner and Chairman of the Board; he had a good deal of experience in real estate--- A. We had to work the budget through---through the taxes, so we had four years of experience with---with appraising and working the budget out with taxes.

Q. Now, you say that after this article appeared that you suddenly began to get cold shoulders from voters, in so many words; right? [TT 45] A. Yes, sir.

Q. Isn't it true in every race, in your own experience, Mr. Damron, over many years as a political figure as you have been, that from the time you get up to a week to ten days from the Primary that people have gotten down to the point where they've, to a very considerable extent, made up their minds? A. I would say a lot of people don't make up their mind until maybe even the day before.

Q. I would believe that's true, but wouldn't you say that a substantial proportion of the voters, though, actually by two weeks to ten days before election, have very largely made up their minds and made their choices? A. I wouldn't think so, because that's why you have your political rallies right up to the date.

Q. I understand that, but what you're saying is that sud-

denly, overnight, you lost all your appeal to the voters--- A. It seems that way---

Q. ---solely as a result of this story? A. Yes, sir; it seems that way.

Q. Yes, sir; now, in spite of this story, Mr. Damron, and the evil effects that you attribute to it, you were again elected Mayor of Crystal River that same December, were you not? A. Yes, sir. [TT 46]

Q. And you say, however, that you were only elected by one vote? A. Yes, sir.

Q. Whereas in previous elections you'd been elected by a substantial majority? A. Yes, sir.

Q. Now, in the previous elections, other than the first one, you had little or no opposition; isn't that true? A. The first time I run, Mr. Ayres, I had the President of the Bank as my opponent, a former Councilman as my opponent, and a man's father who was former mayor---his son run against me.

Q. I understand that, and you said you almost won it in the first and had to run off with one of them? A. No, sir; I got---I liked 46---I think it was 46 votes---46 votes getting more than all three of them put together.

Q. That's correct; so you had a run-off with the highest---next--- A. No, sir---

Q. ---or he conceded? A. No, sir; I liked 46 votes getting more than all three of them, so it wasn't a run-off.

Q. Oh, it was by a majority? A. Yes, sir. [TT 47]

Q. I see; or a plurality, I should say. The one that got the most votes, then, was elected? A. Yes, sir.

Q. There was no run-off between the high man and the second high man. All right; now, in the later races, however, you had little or no opposition until you came up with this election with Stewart Ayers; is that correct? A. Yes, sir; I had a former County Commissioner, Mr. Harley Levins, run against me.

Q. When was this? A. That was December 14th, 1965.

Q. All right; and other than that you had no opposition, I believe? A. Yes, sir; a former mayor run against me December the 10th, 1963.

Q. All right; and anybody in '64? A. No opponent in---let's see---'64, I'm sorry; '64 was no opponent---let's see; no opponent in '64.

Q. All right, sir; now, isn't it true that in this Mayor's race which ended in the election in December of 1966, about six months after this story of which you complained appeared where you only won by one vote and which you attribute now to this story and to no other reason, isn't it true that your opponent in that race was a lawyer in Crystal River named Stewart Ayers? [TT 48] A. Yes, sir; he was a real estate attorney.

Q. Yes, sir; and isn't it true that the question of whether he or your present attorney here, Mr. Dunn, was going to be City Attorney for Crystal River had been a big issue before you and the Council during this year preceding the election? A. Well, rephrase that again, Mr. Ayres; I didn't get it.

Q. I say, isn't it true that there'd been a considerable controversy with the Mayor and the Council there in Crystal River as to whether Mr. Dunn was to be the City Attorney for Crystal River or whether Mr. Ayres was to be the City Attorney for Crystal River; isn't that correct? A. We had to dismiss Mr. Ayres as City Attorney. We used him---I believe it was four months and six days that we found out that he wasn't qualified.

Q. All right; well, he---he replaced, however, Mr. Dunn, didn't he? A. Yes, sir.

Q. Over your opposition? A. Yes, sir; I was---

Q. And wasn't that one of the biggest issues in this Mayor's race? A. No, sir.

Q. It was an issue, wasn't it? A. This same---might say click was still working. [TT 49]

Q. The same click. Have you been opposed through the years by a click in Crystal River, Mr. Damron? A. Lately, yes, sir; yes, sir---

Q. Lately. A. Lately.

Q. And isn't the existence of this click that accounts for, perhaps, your loss of political favor and the loss of business rather than any publicity? A. No, sir. They just didn't want me in office, I guess.

Q. Well, this---this, Mr. Damron, is what happens to a lot of old politicians, isn't it? A. Yes.

Q. They wear out their welcome; isn't this true? A. Well, four---four and a half years wouldn't wear out the welcome.

Q. Well, I mean, I know you were willing and ready to serve and I'm sure that you served as long, perhaps, as you felt able and the people wanted you, but the fact is in your experience, Mr. Damron, politicians do wear out their welcome, don't they, and they get voted out of office and other people get voted in; isn't this true? A. I don't know whether it is or not, Mr. Ayres.

Q. You haven't observed that? A. You're asking me for opinion again. [TT 50]

Q. No, sir; I'm just asking you for a fact of political life? A. No, sir; I couldn't give you a fact on that. I don't---no, sir; I couldn't.

Q. Now, this last time you ran and were defeated by the same opponent, I believe, weren't you? A. Yes, sir.

Q. By 28 votes? A. Twenty---27, 28 votes.

Q. And isn't it true that one or more of the Council members who were the anti-click or in your click were also defeated in this last election? A. I don't know who you talking about. I know one of the Council members did get beat.

Q. By---by a substantial majority? A. I couldn't tell you his vote.

Q. He did get defeated? A. Yes, sir.

Q. Had he more or less taken your side in the squabble

over the City Attorney and the sewer financing? A. I don't really know what his opinion is, sir.

Q. No; I'm asking about what he did in these frequent controversies you had over there with regard to a sewer program and with regard to the City Attorney; wasn't he on your side in most of those controversies, Mr. Damron? [TT 51] A. When he felt I was right, he would go along with it, yes, sir.

Q. And by some strange coincidence he generally felt that you were right, didn't he? A. Well, most of the times I---

Q. Most of the time he did? A. ---I was---I was right, Mr. Ayres. The people---

Q. But all of the Council didn't go along with you, did they, Mr. Damron? A. Two-thirds of the voters, Mr. Ayres, signed a petition for me to do this; so, I guess they must be in majority.

Q. Was that petition circulated by one of your witnesses who is coming in here today, Mrs. Betz? A. It was circulated by the citizens of---of---

Q. Was she one of them who circulated it? A. I don't know whether she was or not. She---it was a Citizens' Committee.

Q. I see; you don't know now who was on it. They were your friends, of course, aren't they? All the people in Crystal River is my friends, Mr. Ayres.

Q. Yes, sir; but they don't all vote for you? A. They must not, no, sir.

Q. And what is the voting population of Crystal River, Mr. Damron? What's the total number of registered [TT 52] voters, approximately? A. I think around six hundred and thirty something.

Q. And not nearly that many actually vote in most of your elections, do they? A. No, sir.

Q. In fact, it's a town not too much larger than Belleview and Dunnellon here in Marion County; right? A. About

twenty-five hundred, I guess.

Q. And there's been a great deal of publicity about factionalism and clicks on the---in the City Government of Crystal River over the years, hasn't there? A. I couldn't answer you.

Q. Just as there has been in connection with Dunnellon and Belleview in this County; isn't that true? A. I couldn't tell you about---

Q. You don't know that? A. ---other years. The only thing I can tell you about is when I was in office.

Q. But you tell us now that during this period there was a click that was fighting you; right? A. It seemed like one of the clicks was in the newspaper, Mr. Ayres.

Q. And isn't it a fact, Mr. Damron, that what you're really trying to accomplish here is to get Lucy Ware fired? A. No, sir; I called and told them about her---her [TT 53] writing, yes, sir.

Q. Didn't you also call them and tell them, Mr. Damron, that if they would fire her you wouldn't even bring this lawsuit that you've brought here? A. Did I phone them and tell them that?

Q. Yes, sir? A. No, sir; I didn't.

Q. You didn't do that? A. No, sir.

Q. But you certainly would be happy if they'd fire Lucy Ware, wouldn't you? A. I would like for them to send someone over there to print the news as it happens correctly.

Q. Other than Lucy Ware? A. If she would print it correctly, I'd be glad to have her. If fact, she was---she's my next-door neighbor, couple of doors down.

Q. That's right; but actually what you're after in this suit is to get her, isn't that true? A. No, sir; I'm for getting good, true publicity.

Q. Yes, sir; now, what's the name of the lady who you say slammed the door in your face? A. I couldn't tell you, sir. I---I was covering the County, and it happened over in

Inverness.

Q. Mr. Damron, you're under oath, of course. [TT 54] A. Yes, sir; I---I realize that, sir.

Q. Do I understand you to be saying that this is the only time in your political career that this ever happened to you, that a voter slammed a door in your face? A. Yes, sir; yes, sir, it is. That's what shocked me so.

Q. And don't you recognize, however, the fact in your general knowledge of political campaigning if that's true you're the luckiest fellow alive? A. Is that right? Well, I was accepted real well, then, at other times.

Q. Mr. Damron, do you remember giving your deposition in this case on September the 21st, 1967, before the Court Reporter here in the Court House in Ocala? A. Yes, sir.

Q. During those---in those depositions were you asked these questions and did you give these answers, on Page Sixteen on Line Nineteen: Well, then, Mr. Damron, do you or don't you know anyone now who stopped trading with you because of this story? Answer: I can't swear that was the reason they stopped doing business with me until I find out. Do you remember being asked that question--- A. Yes, sir.

Q. ---and giving that answer? Then, this question: All right; now, do you know the names of any individuals whom [TT 55] you believe may have stopped trading with you because of this story? And after some conversation---no, you finally never answered that one. All right; let's put it this way. Can you furnish us the names---we have a pretrial conference set in this case, Mr. Damron, as you probably know for September the 27th. That's six days from now. Will you get those names and furnish them to your attorney so he can furnish them on pre-trial conference? I'll be glad to get the names and find out if that's the reason they quit trading with me. Did you give that answer also? A. Yes, sir; I give it.

Q. Now, have you come up with any---we're here on trial some six months after you gave that deposition. Can you

give us now the name of persons who actually stopped trading with you because of this publication? A. No, sir; I can't.

Q. You cannot? A. Because---

Q. No; I just want the answer. Your Counsel can let you explain it as he will. Now, as you sit here now, Mr. Damron, can you give us the name of a single voter in Citrus County who did not vote for you in this Tax Assessor's race because of this publicity, of your own knowledge? A. Of my own knowledge, no, sir; it'd be impossible to give any name like that. [TT 56]

BY MR. AYRES: That's all; you may examine.

Re-Direct Examination

Q. BY MR. DUNN: Mr. Damron, on cross examination inquiry was made of you regarding business---the fact that you were out of your business during the political campaign. Isn't it---what staff work did you have; did you have anyone working in your business? A. Yes, sir; I had my brother working for me which has always filled in for me whenever I needed him.

Q. Was your garage fully staffed? A. Yes, sir.

Q. Were people coming in in normal order? A. You mean customers?

Q. Yes, sir. A. Not after the article; it's dropped down.

Q. I'm talking about before the article? A. Yes, sir; it was coming in---

Q. Did you have any diminishing trade between the time you qualified and started running and the date that the article was published? A. No, sir; none whatsoever.

Q. Was there a diminishment after the article was published? A. Yes, sir; like I said, we had to take what come.

Q. Mr. Damron, you testified you'd been in these [TT 57] political races. What were the qualifications for a person running for Tax Assessor's Office? A. They had to live in

the County one year, be a registered voter, and State---State---State one year and County one year.

Q. Are not people elected to public office, such as Tax Assessor, on a popular vote? A. Yes, sir.

Q. This is the will of the people, is it not? A. Yes, sir; it is.

Q. I believe you---in cross examination question was raised regarding your ability in real estate. Mr. Damron, would you tell the Jury what experience you've had in real estate work? A. Every year we have to set a budget. We run the Town of Crystal River and we have to arrive at our budget with real estate taxes, and personal taxes. We have to know how to assess property and to make the property equal to where it won't be a burden on anyone. This we have done ever since I've been in office as Mayor.

Q. Now, Mr. Ayres asked you about your deposition which he took and requested that you state to him the name of someone who stopped trading with you as a result of this article. Mr. Damron, did the people tell you when they stopped trading with you? [TT 58] A. No, sir; they won't. Mr. Dunn, may I say one thing about---since you got on to the tax? This is the first year in history of Crystal River that we were able to drop our millage to five mills in the City by watching the budget and using the money properly.

BY MR. DUNN: I have no further questions.

Re-Cross Examination

Q. BY MR. AYRES: Mr. Damron, it is true, then, that anyone can run for this office of Tax Assessor so long as they have lived in the State for one year and County for six months and they're a registered voter; that's correct? A. I believe that's right.

Q. Those are the only legal qualifications to hold that office. Now, Mr. Damron, what are the duties and responsi-

bilities of the Tax Assessor---County Tax Assessor in Florida; would you mind telling us? A. Yes, sir; he has to be able to appraise property properly, although we had---I forget now what the outfit's name to come in---professional outfit and appraise the entire County which I feel like that--and that happened before this election, which would've made anyone--be a very easy job for anyone at that time. They were suppose to be professionals.

Q. Isn't it true that the final responsibility for fixing all values rests solely on the Tax Assessor? A. Fixing all values at that--- [TT 59]

Q. On all parcels of real and personal property in the the County? A. At that time they give the authority to this professional outfit to reappraise the County as they thought that it should be.

Q. Well, isn't it true, Mr. Damron, that under that contract the Tax Assessor was the Chief Assessor and had the final word, yes, sir, or did you ever read the contract? A. I never read the contract. I cannot say.

Q. Well, then, you really don't know, do you, Mr. Damron? A. No, sir; I didn't read that contract, no, sir, but I do know---

Q. So, you were running for this office and you didn't take the trouble to even read the contract under which this assessment firm or appraisal firm was making reappraisals of property in the County? A. Mr. Ayres, I don't believe any one of us read the contract, but I will tell you what the--the appraisal company that did appraise---

Q. I would like for you to just answer my question, if you would, Mr. Damron. A. All right, sir.

Q. You don't know, do you, and you didn't take the trouble to read the contract? [TT 60] A. The County Commissioners had that contract, sir.

Q. But you could've---it was a public record, wasn't it? A. I wasn't butting into their business. I had the Town's

business to take care of.

Q. But you were offering yourself for the office of Tax Assessor? A. Yes, sir.

Q. Now, what is the governmental structure of the City or Town of Crystal River, Mr. Damron; you have a mayor and a five-member council, or what? A. Yes, sir.

Q. Isn't it true, Mr. Damron, that under the Charter of the Town of Crystal River the legislative body is the Council? A. You might---

BY MR. DUNN: Your Honor, this isn't proper re-cross.

BY MR. AYRES: I offer it subject to being connected up. I submit that it is.

BY THE COURT: Objection is overruled.

Q. BY MR. AYRES: Aren't they the legislative body? A. Yes, sir; we work together.

Q. I understand that, but actually isn't it true the only power you have as Mayor is to veto ordinances and to supervise the enforcement of the ordinances? A. I am to advise the Council in all matters---all [TT 61] matters---

Q. Yes, sir; but you don't have a vote, do you? A. No, sir; I don't have a vote.

Q. That's right. A. I advise the Council, and I am the executive head of the Town.

Q. That's correct. A. Yes, sir.

Q. But, actually, you have no vote on that Council, do you? A. No, sir; I don't have a vote on the Council, no, sir.

Q. And, so, when you say that "we" adopted a budget, you know in fact that it wasn't adopted by any vote of yours; isn't that true? A. No vote, no, sir, but it was under my help, my supervision.

Q. Well, I'm sure you raised your voice. I gather, apparently, from this publicity you repeatedly did. I'm not denying that, Mr. Damron, but the fact is you had no vote, did you? A. No, sir; I don't vote on any issues---

Q. On the adoption of the budget or anything else of

City affairs other than the enforcement of the City ordinances; is that correct? [TT 62] A. I see that all ordinances are enforced of the Town with---

Q. That's right--- A. ---and they were under my supervision.

Q. ---that's your---that's your primary duty, plus you do have a veto power and that's it? A. Yes, sir; I have to approve all ordinances.

Q. In other words, you're in the same situation as the Mayor of Ocala here is, aren't you, so far as you know? A. Well, you have a lot of experience with real estate.

Q. Well, I don't answer questions, Mr. Damron, but I'd be surprised to find that the Mayor has any hand in making the budget, and I believe you---you didn't actually have a hand, and I know you didn't have a vote by your own testimony. Mr. Damron, do you think it's true that the voters do elect people to an office that calls for special qualifications solely on the basis of their personal popularity; is that what you believe?

BY MR. DUNN: Your Honor, I object to this question because it calls for a conclusion of the witness, and I move to strike the prior question of process which Mr. Ayres promised to connect up because I don't see how he connected it up.

BY THE COURT: Motion to strike is denied. The objection is sustained.

[TT 63] BY MR. AYRES: That's all.

BY MR. DUNN: I have no further questions, Your Honor.

* * *

[TT 66] Plaintiff's Witness

KIERNEY

Q. During the time that you've known Mr. Damron, have you met others who also knew him? A. Yes.

Q. Have you met others who did not know him? A. No,

I didn't run across anyone that didn't know him. Pretty near everybody knows him, Mayor of the Town and everything.

* * *

[TT 66] Q. Do you know his general reputation? A. Mr. Damron has a good reputation as far as I know. I've never heard anyone say anything mean about him.

Q. Now, Mrs. Kierney, during the time Mr. Damron was running for Tax Assessor of Citrus County, what if any campaign work did you do for him? A. Well, he asked me to speak a good word for him and I did, and most of them seemed interested but there was a few of them---I hadn't seen this last thing come out in the paper yet and some of them said, Mrs. Kierney, you ask us to vote for a rat like that?

* * *

[TT 67] Q. BY MR. DUNN: Mrs. Kierney, did---in your travels [TT 68] as you previously testified to, were comments made to you by people with whom you came in contact? A. Yes.

Q. Would you please state what these comments were before this article was published?

* * *

A. Well, the comments seem---seemed to be all right. They spoke well of him, but when I went back to pick some of their money up they called him a rat and a crook.

Q. BY MR. DUNN: Was this after this article was published? A. Well, I---I seen this after, yes.

Q. I mean, the statements that you're testifying to now, were they made to you after this article of April the 18th, 1966, that published this report? A. Yes.

Q. Now, Mrs. Kierney, you testified that you come in contact with Mr. Damron quite regularly. Did you have an occasion to observe his physical appearance at this time prior to the article---time the article was printed? A. Right after that, two times---

Q. Answer my question, Mrs. Kierney. Did you have occasion to examine or notice his physical appearance and [TT 69] attitudes prior to the time this article was published? A. Oh, yes.

Q. What were those attitudes? A. You mean before?

Q. Yes, ma'am? A. Well, he always had a smile and spoke to everybody and was friendly with people, you know.

Q. Now, then, did you have an occasion to see him at intervals after the article was published? A. Two times afterwards, yes.

Q. What was his appearance at those times? A. Well, he just didn't act like the same man. He wasn't friendly and act like he had something on his mind.

Q. Now, then---I mean, what---what---you say act like---he was preoccupied? A. Well, he didn't---he always looked up and, hello, Mrs. Kierney, how are you today, and smile, and he seemed to not notice me after I spoke to him.

* * *

[TT 73] Q. All right; I ask you now if you can give me the name of a single voter in Citrus County who, to your knowledge, failed to vote for Mr. Damron because of this publicity? A. No.

* * *

[TT 81] Plaintiff's Witness

BETZ

Q. Didn't you take the side of Mr. Damron in this controversy that went on in Crystal River for a period of a year or more with regard to the method of financing the sewer project for the City of Crystal River? A. Mr. Damron and I were in agreement, but as far as Mr. Damron's side was concerned I had my own convictions.

Q. Well, and your own convictions happened to coincide

with his own convictions--- A. That's true.

Q. ---that's what you're saying; and you were an active participant in that fight, weren't you, Mrs. Betz? A. Yes, sir.

* * *

[TT 87] Plaintiff's Witness

EVANS

Q. Do you know his general reputation as to honesty and integrity? A. Yes, sir.

Q. Would you state that reputation? A. I would say it would be beyond reproach.

* * *

[TT 88] Q. Did you have---in your contacts with the Plaintiff did you observe his physical appearance prior to publication of this article A. Yes, sir.

Q. What was this appearance? A. Well, it was---real optimistic about everything that he was doing.

Q. What was his general mental attitude, as you observed it? A. It was good; it was good.

Q. After the publication of this article, what was his apparent mental attitude? A. Well, he came---he came to me that day or the next day and he was very upset mentally. I---

Q. In what way was he mentally upset? A. Well, he was just nervous and he---he said he just didn't---

* * *

[TT 87] A. Well, as I say, he appeared to me to be extremely nervous and upset.

Q. How long did this condition continue? A. I'd---I'd say all the way through---til after the election, and then even past then.

Q. Has it continued to a more current date? A. Well, he never has seemed the same to me.

* * *

[TT 92] Plaintiff's Witness

KENOYER

Q. Do you know Mr. Damron's reputation for honesty and integrity? A. Yes, sir.

Q. Would you please state what that is? A. Well, I found him to be very honest and willing to go out of his way to help other people. I've seen him do jobs for people and not charge them, and we've worked together on the City Council and I think he's very honest.

* * *

[TT 93] Q. Prior to the time this article was published, in your contacts with Mr. Damron what was his general appearance, physical appearance and mental attitude? A. Very good; he seemed to be getting along fine and everything was going good. I feel that there wasn't anything out of the way at all with his attitude.

Q. After the publication of this article how did Mr. Damron appear to you? A. Well, he appeared broken hearted and like he was brow-beaten because of the article. He didn't feel like he wanted---didn't have the energy and the push that he'd had before.

* * *

Q. BY MR. DUNN: Would you please state these remarks? A. I had some people come in. I can't tell you who [TT 94] they were, but the customers come in and say, well, they sure fixed him up this time putting his name in the paper when he didn't have anything to do with it, and then I had others say, goodie, they fixed---they fixed him up this time; now he's going to lose some votes. So, I---I had I don't know how many people comment on this different article, most of them feeling that he was going to lose because of the misnomer here.

* * *

[TT 99] Plaintiff's Witness

THOMPSON

Q. Immediately after the publication of this article what appearance did this Mayor have to you? A. Well, my personal opinion it had an adverse effect on him. He seemed---[TT 100] Q. In what way? A. He seemed to be concerned about this statement that happened. He was---he wasn't his old self; I can say that.

Q. When you say he wasn't his old self, would you describe to the Jury how he appeared? A. Well, he seemed to be worried and he just---he'd walk past you and not see you.

* * *

[TT 105] Plaintiff's Witness

HENLEY

A. Nothing only just regular routine, that Mr. Damron was running for the office and that---that they didn't care about voting for a man like that.

* * *

[TT 106] Q. Now, over this period of time, Mr. Henley, did you hear these comments, over a week or ten days, something like that? A. Well, it was---it was continuous; practically everywhere I'd go, down around the fish houses, and at---at the different places where I would go.

Q. And that went on, then, just about up to the time of the vote, which was about two weeks later, something [TT 107] like that? A. I would say approximately two weeks, yes, sir.

Q. Well, now, in that period didn't you also hear them commenting on the fact that the Star-Banner had first printed

a correction and retraction and then it printed a letter from Mr. Damron with an apology? A. No, sir; I did not.

* * *

[TT 109] Plaintiff's Witness

MILEY

Q. BY MR. DUNN: What were those comments or remarks? A. Well, the comments there were if---when this thing hit the headline just shortly before election, the people said, well, if he'll do that to those people what would he do to us; so, one of them, they said, well, we don't need a man like that to represent us in an office like the Tax Assessor's [TT 110] office.

Q. Was this repeated comments or just isolated comments? A. No; it was repeatedly all over the community and around, different ones that were--

Q. Do you know approximately how many voters reside in that particular community? A. We had---oh, I say we had around 375 that voted. There's more registered than that but they never---don't all vote.

* * *

Cross Examination

[TT 110] Q. BY MR. AYRES: Now, would you give us the names, please, Mr. Miley, of the people who made these comments? A. No, sir; I couldn't do that.

* * *

[TT 111] BY THE COURT: You're in a spot if you don't answer the question. A. Harry M. Yates.

Q. BY MR. AYRES: Where does he live, Mr.--- A. Hernando.

Q. All right; go ahead? A. Carroll Cultice.

Q. All right, sir; go ahead? He lives at Hernando also? A. Yes, sir; all live at Hernando.

Q. All right, sir; any others? A. Glen VanNess.
Q. All right, sir? A. And Thomas Croft.

* * *

[TT 112] Q. Over how long a period of time did you hear these discussions and comments? A. Well, it's only a matter of a couple of weeks, something like that.

Q. Between then and the time of the primary? A. From the time the paper hit the newsstand til after the first election.

Q. All right; in these same discussions did you hear any comments about the story that the Star-Banner ran correcting this error and retracting it, about their running Mr. Damron's letter and apologizing? A. Would you repeat that, sir?

Q. I say, in these same discussions didn't you hear them---also hear them commenting on the fact that the Star-Banner had printed a correction and retraction and that they had printed Mr. Damron's letter with an apology? A. No, sir.

* * *

[TT 117] Plaintiff's Witness

BYRD

Q. I'm not asking you for your opinion, Mr. Byrd, I'm asking you to state the comments that you heard after this article was published? A. That if Mr. Damron was such a man as that they didn't want him for Tax Assessor.

* * *

[TT 123] Plaintiff's Witness

GILSTRAP

A. Well, one of---one of the comments that I remember so well was that they---they didn't see how a man could run for Tax Assessor that was accused of what he was ac-

cused here in the paper.

* * *

[TT 123] Q. That's what I meant; and isn't it a fact that you heard comments back a month or six weeks before this story appeared about the fact that there had been an article about his brother, James Damron, having been accused of perjury; you heard comments about that, didn't you, Mr. Gilstrap? A. No, sir; I---I never heard any---anything, Mr. Ayres, about the Damron situation as far as what I heard going [TT 124] around over the County until this piece came out in the paper.

Q. All right; well, after it came out you heard these comments, then, on up til the time of the primary, about two weeks after the article ran, did you? A. Yes, sir.

* * *

[TT 127] Plaintiff's Witness

LAND

Q. What is your occupation? A. I'm a news reporter for the Citrus County Chronicle.

* * *

[TT 129] Q. BY MR. DUNN: Would you please state what these comments were? A. Well, they were of a general nature that he must be some kind of a nut to---if he's going to run for public office when he's under Federal indictment for perjury.

Q. Were these comments generally made or sparsely made? [TT 130] A. This news went like wildfire. I mean, it was all over the County. They were not sparsely made. It's all everybody talked about for a while.

Q. Did it seem to diminish prior to the election date, May 3rd? A. I still heard it at the rallies.

Q. Up to election? A. Yes.

* * *

[TT 132] A. I didn't read it.

Q. No; I didn't say that, but you heard the people comment on that also, didn't you, in that community? A. Yes, I did.

BY MR. AYRES: That's all.

Re-Direct Examination

Q. BY MR. DUNN: Mrs. Land, you testified that Lucy Ware told you that Fred Meier had crossed out the name James Damron in the article that she telephoned in and inserted the name Leonard Damron? A. That is what Mrs. Ware told me after---after this was published, that it was not her mistake.

Q. In the trade of news journalism, Mrs. Land, [TT 133] is this done? A. Not done that I know of. You don't change names without checking your source.

* * *

[TT 140] Plaintiff's Witness

BLAND

Q. BY MR. DUNN: Would you please read the contents of the letter, Mr. Bland? A. Dear Mr. Phillips: Once again through a careless reporting or editing you have done an irrevocable damage to a fine, honest, civic-minded citizen of Citrus County. No amount of retractions can undo the damage that you have done to Mayor Leonard Damron, his family, and his bid for election to the Tax Assessor's Office of Citrus County. You evidently [TT 141] believe in the policy of lies, misquotes, carelessness and distortion because you continue to do it. I hope your circulation increases enough to pay the damages that are bound to result from this type reporting. You may print this letter.

* * *

[TT 145] Plaintiff's Motion to Amend Complaint

BY MR. DUNN: Your Honor, this is a technical motion for purposes of avoiding any later conflict, and at this time I'd like to move on behalf of the Plaintiff that we be allowed to amend our Complaint in Paragraph Eleven to conform to the evidence as having been introduced---evidence presented here in court in this respect: Paragraph Eleven now states that because of the actions of the Defendants in publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the Plaintiff has suffered irreparable damages to his reputation as an individual, public officer, candidate for public office, and as a businessman. The term "as an individual", I would like to expand as to his embarrassment, mental anguish, and upset. Under the Rule, I would like to interpose this amendment at this time.

BY MR. AYRES: I think that's simply *giving* a little *law*, Your Honor. That's already covered by his allegation.

[TT 146] BY THE COURT: Well, I think it is, too, but if he wishes to amend his Complaint to that extent, the Court will grant the amendment.

* * *

[TT 148] Defendants' Reporter

WARE

BY MR. AYRES: Ladies and Gentlemen of the Jury, this is a story which appears in the Ocala Star-Banner, the issue of Sunday, January 30, 1966. It's headlined "Damron faces Federal Court Perjury Charge", by Lucy Ware, Star-Banner Staff Writer; Inglis: James Damron, local garage owner, has been released on $2,000 bond after being arrested by Federal Marshals from Gainesville. Damron was indicted by a Federal Grand Jury in Tallahassee Tuesday and charged with perjury in a 1964 civil case in federal court. The case involved

former Levy County Sheriff J. W. Turner and Deputy Sammy Cason. Mrs. [TT 149] Gail Fonley of the Issac Walton Lodge in Yankeetown alleged that Cason applied the brakes too fast, throwing her up against the case of the deputy's car, injuring her neck. The incident occurred in October of 1962. The Finley's were arrested by Cason and Deputy Walter Beckham for interfering with arrest and convicted of that charge in county court. The decision of the county court has been upheld by higher courts, including the State Supreme Court. Afterward, the Finley's charged Turner and Cason with a violation of their civil rights through mistreatment under an old, little used federal statute. Tampa Attorneys Cody Fowler and James Thompson represented the Finley's in the trial held in federal court in Gainesville. The couple first asked $75,000 in damages, but during the course of the trial raised the request to $125,000. The Finley's had become involved with Cason after Sheriff Turner received a New York warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly staying at the Lodge in Yankeetown. The Finley's claimed that the deputies barged in and "battled them around" without cause. The deputies alleged the couple had been drinking and became belligerent. Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958, several years prior to the incident. But seven or eight other witnesses summoned by the plaintiff gave testimony saying Mrs. Finley had not previously worn a brace. The federal jury awarded damages totaling [TT 150] $65,000, $40,000 compensatory damages to Mrs. Finley, $20,000 to her husband, and $5,000 punitive damages to Mrs. Finley. This was later reduced to $55.000.

Damron was taken before U. S. Commissioner William Chandler in Gainesville Thursday following his arrest. Bond was set at $2,000. Trial has been scheduled for federal court in April. Now Mrs. Ware, I show you another page from another edition of the Ocala Star-Banner, being Page Nine

of the edition of Monday, April the 18th, and ask you to examine that page and state whether you wrote any of the stories appearing thereon? A. Yes, sir; three of them.

Q. In particular, I direct your attention to a story appearing in the lower right hand portion of the paper reading: "Damron Case Passed Over To Next U. S. Court Term", and ask you whether you wrote that story? A. Yes, sir.

Q. This has been received in evidence as Defendants' Exhibit---Plaintiff's Exhibit Three. Now, what procedure do you follow in writing a story and transmitting it to the Star-Banner, Mrs. Ware? A. Well, I use one of two procedures. If the story is not of particular news interest, I generally type it and mail it in since the mail service is one day. If the story is of particular news value, I phone it in early in the mornings.

* * *

[TT 151] Q. All right; now, what procedure did you follow in transmitting this particular story, "Damron Case passed Over to Next U. S. Court Term"; what procedure did you follow in transmitting that story to the Star-Banner for Publication? A. I typed it first at home and read it over the phone the following morning, that same morning to Mr. Meier.

* * *

[TT 152] Q. And what is this---what is this story? A. The story is essentially the one that was called in, the only change being that the city was changed. When I phoned in that morning, I had a Gainesville dateline which was where the action had occurred, and I was informed that our Editor had given instructions that any story appearing on this page, which was an area page, should have---and coming out of the area concerning area people should have the dateline of the city that the people were concerned with because people read datelines rather than the text of a story.

* * *

[TT 152] Q. Who did you telephone it to? A. Fred Meier, who was area editor.

Q. And how long had Mr. Meier been operating in that capacity, to your knowledge? [TT 153] A. About a month, possibly a few days longer, but not very long.

Q. He was new at the job, then? A. Yes, sir.

Q. All right; and this is the original that you typed that you called in? A. Yes, sir.

BY MR. AYRES: We offer this in evidence as Plaintiff's ---Defendants' Exhibit Two.

BY MR. DUNN: Your Honor, we object to the admission of this into evidence on the grounds it's merely a self-serving declaration on the part of this witness. The evidence---the paper itself speaks for itself.

BY THE COURT: Objection is overruled. The document is admitted into evidence.

BY THE CLERK OF THE COURT: Defendants' Exhibit Number Two.

BY MR. AYRES: Ladies and Gentlemen of the Jury, this document has been admitted in evidence as Defendants' Exhibit Two. You'll have ample opportunity when you retire to the juryroom---you'll be given all the exhibits. You'll have an opportunity to read this, so I won't take your time now by doing so. I simply call your attention to the fact that the dateline is Gainesville and read---the opening paragraph read: "Inglis garage owner James Damron pled not guilty to Federal [TT 154] charges of perjury", and goes on then. That's the tentative head. Then, the story begins: "Gainesville – A case charging Inglis garage owner James Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge G. Harrold Carswell." Now, Mrs. Ware, did you see the---this story which has been marked---received in evidence---it's before you; I beg your pardon. Did you see this story as it actually appeared in the page of the paper which has been

received into evidence as Defendant's Exhibit Three the Damron Case Passed Over story? A. Yes, sir.

Q. Did you---anything strike you about that story when you read it? A. Yes, sir; I was in Bronson, had been covering a meeting there and picked up the paper in the drug store there when I went to eat a sandwich.

Q. When was this? A. This was on the day that it was---came out, Monday, April the 18th; that afternoon, late.

Q. When did you phone the story in? A. That morning about six or seven a.m.

Q. Early in the morning? A. Yes, sir.

Q. You saw this---this paper, then, as it actually ran that afternoon in Bronson?

* * *

[TT 155] Q. All right; what did you notice about the story, if anything? A. The one thing that I noticed about the whole page was that word "Leonard" had been inserted in the place where I had read "James".

Q. What did you do, if anything? A. I called Fred Meier at home from the drug store in Bronson and asked him what had happened and told him that---to be sure that a correction ran the next day. It upset me a good deal to see that the mistake had been made.

Q. All right; now, was a correction run the next day? A. Yes, sir.

* * *

[TT 160] A. Actually, I think there was a time when he was working in both, but I'm--- I'm not sure. He---he---the---the information that I went by in basing him in Inglis was the F. B. I.'s information. I assumed they knew what they were doing.

Q. But it is your testimony that you did not check the fact yourself; is this correct? A. No, sir; I don't suppose I did. I knew that he still owned the Inglis garage, that he

was at times working days in Crystal River and nights in Inglis.

Q. But you didn't check the fact? A. No, sir; I trust the F. B. I.'s information.

* * *

[TT 162] Defendants' Area Editor

MEIER

Q. Did you have any connection with the publication of that story in the Ocala Star-Banner? A. Yes.

Q. And what----how did you participate in connection with it? A. I took it over the phone from Lucy Ware, basically. I do edit as I go along on the phone and make inserts and delate words that I feel are not appropriate to the story.

Q. Well, is this substantially in the form in which she phoned it in? A. Yes, except for one word.

Q. What is that one word? A. Leonard.

Q. Now, to the best of your recollection now, what word did she actually use when she called in, Mr. Meier? A. All---the only word I caught was "Damron" and automatically I put "Leonard" down.

Q. Why did you do that? A. He was the only Damron I knew. It was probably a mental aberration. I just assumed it was Leonard Damron. I didn't hear "Leonard" on the phone; I can't swear that I did. I just heard the word "Damron".

Q. And you just---and had you had occasion to---in the past prior to that---before that date to handle any other stories about Leonard Damron? A. Yes.

Q. And in his capacity as Mayor of Crystal River? A. Yes.

[TT 164] Q. ---in connection with the sewer bond controversy over there and financing? A. Yes.

Q. Had you had more than one story about him? A. Yes.

Q. Had you had many stories? A. Quite a few.

Q. And this is the only first name that you recognized in connection with the word---the name "Damron"? A. Yes.

Q. Now, following the publication of that story, did Mrs. Ware contact you? A. Yes.

Q. And what did she tell you, if anything? A. She told me I had the wrong first name. It was James Damron, not Leonard Damron.

Q. Did you take any action as a result of that call from her? A. I immediately wrote and published a correction.

* * *

[TT 166] Q. Well, tell me, Mr. Meier, having written so many stories about Mr. Leonard Damron, weren't you aware that Mr. Damron was in Crystal River, Florida? A. Yes.

Q. Mr. Meier, will you look at the dateline on the story which was published in error and answer me, what is the dateline on that particular story? A. Inglis.

Q. You had a mental aberration? A. Yes.

Q. A man that you had been writing stories about in Crystal River, Florida, and you suddenly get a story about him in Inglis, Florida, and you make this change without checking? A. It so happened I did.

Q. Thirty-seven years in the newspaper business? A. Uh, huh.

* * *

[TT 171] Q. At the time that this story appeared, Mr. Meier, did you know Mr. Leonard Damron personally? A. No.

Q. Did you have occasion to meet him later? A. Yes.

Q. Where? A. At a political rally in Citrus High School field.

* * *

[TT 207] Defendants' Witness

HOOD

Q. What---how did you happen to become acquainted with him in your capacity as Deputy Clerk, Mrs. Hood? A. Well, he was Mayor.

Q. And as a result of his official position and your official position, did you have occasion to see him [TT 208] frequently? A. Yes, sir.

Q. Did you see him frequently during the Spring of the year 1966, two years ago, when Mr. Damron was a candidate for Tax Assessor, or the nomination as Tax Assessor of Citrus County, Florida? A. Yes.

* * *

[TT 211] Q. BY MR. DUNN: Mrs. Hood, after this article of April 18, 1966, in which we're referring to, Damron's Case Passed Over to Next Term of Court, is it your testimony that after this article was published in the Crystal River area that Mr. Damron did not in any way appear concerned about that article? A. Yes, I think he appeared concerned about the article.

Q. Will you state to the Jury how he appeared concerned about the article? A. It worried him that this came out in the paper.

BY MR. DUNN: Thank you. I have no further questions.

* * *

[TT 214] Defendants' Witness

JONES

Q. How long have you been a member of City Council of the City of Crystal River, approximately? A. Going on six years.

Q. During that period of time and before that have you had occasion to become acquainted with Mr. Leonard Dam-

ron? A. Yes, sir.

Q. Did you know Mr. Damron during the Spring of 1966, two years ago, when he was a candidate for nomination to the office of Tax Assessor in the Democratic Primary on May 3rd, 1966?

* * *

[TT 218] Q. Isn't it true, Mr. Jones, that you and Mr. Damron have been at odds many times on issues in City government? A. That's right; yes, sir.

* * *

[TT 220] Defendant's Witness

ALLEN

Q. And do you remember, Mrs. Allen, the Democratic Primary election on May 3rd, 1966, at which time Mr. Damron was a candidate for nomination for the Office of Tax Assessor; you remember that election two years ago? A. Yes, sir.

Q. Did you have occasion to see Mr. Damron from time to time during the campaign that led up to that election beginning in January and February and ending on May the 3rd? A. Occasionally I saw him, yes, sir.

* * *

[TT 228] Defendants' Witness

WILLIAMS

Q. BY MR. AYRES: Now, Mr. Williams, you stated that you saw Mr. Damron frequently. Did you see him on more than one occasion between April 18th when this offending article appeared and May 3rd, the date of the Primary, some fifteen days later? A. Yes, sir; I think I had.

Q. All right; now, did you observe any difference in his appearance or demeanor or actions as you saw him in that

period as contrasted with his appearance and actions before that date? A. No, sir; I couldn't tell any difference in him.

* * *

[TT 233] Defendants' Witness

OLIPHANT

Q. All right, sir; now, do you remember that on April 18th, 1966, two years ago this Spring, at a time that Mr. Damron was a candidate for Tax Assessor of Citrus County, Florida, in the Democratic Primary on May 3rd; you remember that campaign? A. Yes, sir.

Q. Do you remember that Mr. Damron was a candidate? A. Yes, sir.

* * *

[TT 238] Q. Did you ever hear any comments to the effect or in substance that it would hurt his candidacy or his chances of election. A. No, I didn't.

* * *

[TT 240] Defendants' Witness

ROCKS

Q. Do you hold any official position in Citrus County? A. County Commissioner.

* * *

[TT 243] A. Well, the general substance of it, of course, that they knew the difference between Mr. Damron---Jim Damron and Mr. Leonard Damron and there was no---there was no thought [TT 244] as far as any damage between the brothers, that they knew it was Jim Damron that they were speaking of.

Q. Did you ever hear any comment to the effect that the publication of this article containing the mistake in the name

was injuring or damaging his candidacy in any way? A. No, sir.

Q. You never did? A. Not the first time.

* * *

[TT 253] Defendants' Witness

WHITNER

Q. BY MR. DUNN: Mr. Whitner, you testified, I believe, that you saw Mr. Damron quite regularly, more especially during the campaign period of April 18, 1963, to May 3rd of '63? A. Yes, sir.

* * *

[TT 258] Defendants' Witness

TOLLE

Q. After that article appeared, as you went about campaigning and working in the Tax Assessor's Office and attending these rallies, Mr. Tolle, did you hear general comment and discussion of Mr. Damron's candidacy and of this article---just general conversation that you overheard, comments by the voters of Citrus? A. Of his candidacy, yes, sir; there was discussion---

* * *

[TT 274] *Directed Verdict for Plaintiff on Liability*

BY THE COURT: Well, I think liability as to compensatory damages is admitted in this case.

* * *

[TT 276] BY MR. DUNN: The point I'm getting at, Your Honor, I don't think it's in the province of the Jury in this case to determine whether or not the question of liability of the Defendant. As you've already stated, it is the issue of damages,

both compensatory as well as punitive.

BY THE COURT: The publication of the article is libellous per se---

BY MR. DUNN: Yes, sir.

BY THE COURT: Whether or not the Plaintiff suffered any damage by reason of the publication is the only issue for the Jury to decide.

BY MR. DUNN: Yes, sir.

BY THE COURT: And I grant your motion to that extent.

* * *

[TT 277] BY THE COURT: That's right, and whether or not the Plaintiff suffered any damage by reason of it is a matter for them to decide.

BY MR. AYRES: And, in other words, I---I don't take it that your ruling comprehends an instruction by you to the Jury that they must return a verdict for the Plaintiff because of the publication standing alone without more.

BY THE COURT: No; they've still go to decide what damage he suffered.

BY MR. AYRES: Yes, sir. You all meet me in the office shortly and we'll settle the instructions.

* * *

[TT 301] This is a suit for damages filed by Leonard Damron, the Plaintiff, against the Ocala Star-Banner Company, and Loyal Phillips, the Defendants, because of a certain defamatory article published about him. The Court instructs you that the printing of any expression that brings a man into contempt or ridicule or tends to degrade him in the estimation of society is a libel, as in this case where the imputation of a felony, perjury, was allegedly made, and if you believe from the evidence that such an imputation of a felony, perjury, was made about the Plaintiff and published by the Defendants, then the Defendants are guilty of a libel. The

Court instructs the Jury that you need not consider whether a libel has been committed and instructs you that there must be a finding in favor of the Plaintiff in accordance with the other instructions given you by the Court.

* * *

[TT 303] You are instructed that in this case the charge made against the Plaintiff was libelous, per se, and that it created a presumption of damage to the Plaintiff but that if this presumption of damage is overcome [TT 304] by evidence offered by the parties and there is no proof of general damage to the Plaintiff by a preponderance of the evidence, then you cannot award anything more than nominal damages to the Plaintiff. The Court instructs the Jury that if you believe from the evidence and by the instructions of the Court that the Plaintiff is entitled to recover from the Defendants, then in addition to any compensatory damages, if any, that he may have---may recover, you may, as hereinafter stated, award the Plaintiff punitive damages when malice is shown or implied. The Court instructs the Jury that punitive damages are awarded as a pecuniary punishment to the Defendants and a deterrent to others, and you may take into consideration the financial status of the Defendants to the---to determine the extent of the punishment. The Court instructs the Jury that in your consideration of damages that may be awarded to the Plaintiff, you may do so in accordance with the following: First; as to compensatory or actual damages you may award a sum that will fully and adequately compensate the Plaintiff for his mental suffering, embarrassment and injury to his reputation as a citizen and public official, and any other damage that would naturally flow from being falsely accused of a felony. Two; as to exemplary or punitive damages, you may award a sum that will serve as a pecuniary punishment to the Defendants, taking into consideration their financial status and also as a deterrent to others. The

Court instructs the Jury that malice [TT 305] may be implied or inferred where the charge of a felony is imputed to the Plaintiff. In other words, if you are reasonably satisfied from the evidence that the Defendants imputed the charge of perjury to the Plaintiff, of which he was not guilty, then you may infer that it was maliciously made and it is not necessary to prove any express malice or ill-will in order to warrant a verdict for punitive damages in favor of the Plaintiff.

* * *

Monday, April 18, 1966 Ocala Star-Banner

Damron Case Passed Over To Next U.S. Court Term

INGLIS — A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harold Carswell in Gainesville.

Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which esulted in damages of $65,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly in the Izaac Walton Lodge.

According to officials, the Finleys interfered with the officers, were arrested and charged with interfering with arrest.

A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

The civil suit which followed was filed under an old, little-used federal statute in which the Finleys charged former sheriff J. W. Turner and Ca with a violaton of their c rights.

Damron testified that he h seen Mrs. Finley in a n brace in late 1957 or early 19 several years prior to the in dent, but numerous other w nesses, summoned by the pla tiff, gave testimony, saying t Mrs. finley had not previou worn a brace.

Damron was released $2,000 bond, following his ar by federal marshals Jan. 27.

Plaintiff's Exhibit 3

So Sorry

Editor, Star-Banner:

Once again through careless reporting or editing you have done an irrevocable damage to a fine, honest, civic minded citizen of Citrus County.

No amount of retracting can undo the damage that you have done to Mayor Leonard Damron, his family and his bid for election to the tax assessor's office of Citrus County.

You evidently believe in the policy of lies, misquotes, carelessness and distortion because you continue to do it.

I hope your circulation increases enough to pay for the damages that are bound to result from this type reporting. You may print this letter.

Glenn A. Bland

Defendants' Exhibit 4

Damron Faces Federal Court Perjury Charge

By LUCY WARE
Star-Banner Staff Writer

INGLIS — James Damron, local garage owner, has been released on $2,000 bond after being arrested by federal marshals from Gainesville.

Damron was indicted by a federal grand jury in Tallahassee Tuesday and charged with perjury in a 1964 civil case in federal court. The case involved former Levy County Sheriff J. W. Turner and Deputy Sammy Cason.

Mrs. Gail Finley of the Issac Walton Lodge in Yankeetown alleged that Cason applied the brakes too fast throwing her up against the case of the deputy's car, injuring her neck. The incident occurred in October of 1962.

The Finleys were arrested by Cason and Deputy Walter Beckham for interfering with arrest and convicted of that charge in county court.

The decision of the county court has been upheld by higher courts, including the State Supreme Court.

Afterward the Finleys charged Turner and Cason with a violation of their civil rights through mistreatment under an old, little used, federal statute.

Tampas Attorneys Cody Fowler and James Thompson represented the Finleys in the trial held in federal court in Gainesville.

The couple first asked $75,000 in damages, but during the course of the trial raised the request to $125,000.

Defendants' Exhibit 1

The Finleys had become involved with Cason after Sheriff Turner received a New York warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly staying at the lodge in Yankeetown.

The Finleys claimed that the deputies barged in and "batted them around" without cause. The deputies alleged the couple had been drinking and became belligerent.